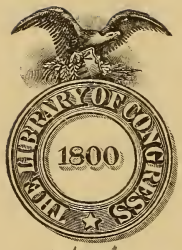

REPORT

OF THE

JOINT COMMITTEE

OF THE

SENATE AND ASSEMBLY

OF THE STATE OF NEW YORK

APPOINTED TO INVESTIGATE CORRUPT PRACTICES IN CONNECTION WITH LEGISLATION, AND THE AFFAIRS OF INSURANCE COMPANIES, OTHER THAN THOSE DOING LIFE INSURANCE BUSINESS

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IN ASSEMBLY,

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REPORT OF THE JOINT COMMITTEE OF THE SENATE AND ASSEMBLY OF THE STATE OF NEW YORK, APPOINTED TO INVESTIGATE CORRUPT PRACTICES IN CONNECTION WITH LEGISLATION, AND THE AFFAIRS OF INSURANCE COMPANIES, OTHER THAN THOSE DOING LIFE INSURANCE BUSINESS.

To the Senate and Assembly:

The Joint Committee of the Senate and Assembly, appointed pursuant to a concurrent resolution adopted the 24th day of May, 1910, submit the following report:

The resolution directed the Committee

> "To investigate as speedily as possible, all corruption and corrupt practices shown to exist by the evidence of the recent investigation had before the Senate of the state of New York; all matters indicating corrupt practices in connection with legislation which have developed in the recent investigation conducted by the Superintendent of Insurance; the business methods, operation, management, supervision and control of all insurance companies other than those doing life insurance business, including fire insurance exchanges and state local boards of fire underwriters and the relations of such companies, exchanges and boards with legislation, including industrial life insurance; any specific charge, veri-

fied upon knowledge of corrupt practices or official misconduct in connection with legislation or the legislature, or with any matter or proceeding before any state department, board, body or officer; and any other matters pertaining to the conduct of the business of the state and its officers which, in the judgment of the committee, warrants investigation, to the end that such remedial legislation may be enacted or changed or method in the conduct of public business may be adopted as will prevent a recurrence of any abuse or evils disclosed."

The Committee organized on the 8th day of July, 1910, and selected Hon. Edwin A. Merritt, Jr., Chairman; Hon. Alexander Brough, Vice-Chairman; Walter E. Moses, Secretary; Charles R. Hotaling, Sergeant-at-Arms; George M. Shotwell, Official Stenographer; and employed M. Linn Bruce, as Counsel-in-Chief, and subsequently Alfred Hurrell and Isidor J. Kresel were retained as Assistant Counsel; Prof. Albert W. Whitney, as Actuary, and L. H. Conant and Marvyn Scudder, as Accountants.

It began its hearings on September 27, 1910, and closed them on January 6, 1911, holding during this period public sessions on forty-two days, at which testimony was taken. These sessions were all held at the City Hall in the city of New York, except the session of October 21, 1910, which was held at the State prison, at Ossining, for the purpose of examining a witness confined in that institution. One hundred and eighty-four witnesses were called before the Committee and examined and 5,500 pages of oral evidence and 1,500 pages of documentary evidence received.

The Committee endeavored to take up the subjects which it was directed to investigate, in the order in which they were set forth in the resolution, but found it impossible to adhere at all times strictly to this order on account of the absence of witnesses.

Although its work was arduous and continuous, it was found impossible to take up all the subjects mentioned in the resolution.

In considering the subject of insurance, the Committee was compelled, for lack of time, to confine its investigation to fire insurance, including fire insurance exchanges and boards of underwriters. Moreover, in relation to the subject of industrial insur-

ance the Committee was advised that the Superintendent of Insurance had the subject under investigation and would report thereon.

No definite and substantial charge, verified upon knowledge of corrupt practices or official misconduct in connection with legislation or the Legislature or with any matter or proceeding before any state department, board, body or officer was filed with the Committee.

A digest or detail of the testimony taken cannot be included within the limits of this report. The Committee, however, here endeavors to set forth the salient facts established by the evidence in connection with the different subjects of inquiry, to wit:

1. Matters indicating corrupt practices in connection with legislation developed in an investigation conducted by the Superintendent of Insurance during the spring of 1910.

2. Corruption and corrupt practices shown to exist by the evidence in the investigation had by the Senate during the regular session of 1910.

3. Allegations of corrupt practices in connection with legislation relating to payment by the state of a beet sugar bounty.

4. Allegations of corrupt practices in connection with the anti-race track gambling bills during the regular and special sessions of the Legislature of 1908.

5. Allegations of corrupt practices in connection with amendments to the Agricultural Law, with reference to milk, during the session of 1909.

6. The business methods, operation, management, supervision and control of fire insurance companies, exchanges and state and local boards of fire underwriters.

I.

Matters Indicating Corrupt Practices in Connection with Legislation Developed in the Investigation Conducted by the Superintendent of Insurance, During the Spring of 1910.

Between March 18 and April 6, 1910, a public investigation of the expenses of insurance companies from 1900 to 1910, in-

clusive, particularly in connection with legislation, was had by the Superintendent of Insurance. The testimony and exhibits therein, together with the formal report of the Superintendent, were transmitted by the Executive to the Legislature on April 11, 1910.

It appears from the report made by the Superintendent of Insurance, that three loose-leaf ledgers, covering the transactions from 1900 to March, 1905, of the firm of Ellingwood & Cunningham, stockbrokers, operating in New York city, came into the possession of the Superintendent of Insurance; and that an examination of these ledgers developed the existence therein of accounts with several former members of the Legislature, some of whom had been active on the insurance, railroads and rules committees. A partial examination of these accounts, in so far as they appeared in these ledgers, was made by the Superintendent of Insurance, but further enquiry was prevented by objection raised as to the power of the Superintendent of Insurance to proceed further with the investigation.

Prior to the appointment of the Committee, the Superintendent of Insurance had ascertained that the remaining books, papers and records of the firm of Ellingwood & Cunningham were in the possession of Mr. Cunningham, and stored by him in a barn situated in Montclair, in the state of New Jersey. Whereupon the Superintendent of Insurance caused the same to be placed under constant surveillance. Upon the organization of this Committee, the Superintendent of Insurance placed at the disposal of the Committee the evidence taken by him in the investigation conducted by him, together with the loose-leaf ledgers of Ellingwood & Cunningham, and all other documents and papers which he had in his possession.

Immediately upon the organization of the Committee, it undertook the surveillance of the books and papers of the firm of Ellingwood & Cunningham, at Montclair, N. J. These, in the meantime, had been moved to a warehouse. After service of subpœna *duces tecum* upon Mr. Cunningham, thorough examination was made of all of these books and papers, at the warehouse in Montclair. This work consumed several weeks and was attended with many difficulties. The books and papers filled ten large packing

cases, were not indexed or systematically arranged. After the examination was completed, the books and papers found on such examination to be necessary and material to the inquiry were removed to the offices of the Committee, at No. 55 Liberty street, in the city of New York.

On the examination made at Montclair, there were found missing from these records and papers some 40,000 cancelled checks of the firm, ten letter books, two stub checkbooks and two blotters, and a deposit book which contained a specific description of each check and draft deposited by the firm after April, 1902, all of which were of the utmost importance to the investigation, and the absence of which seriously hampered the work of the Committee and increased its difficulties. The whereabouts of these books and papers, or the time of their abstraction, the Committee was unable to determine.

An examination of the records which remained, together with an examination of Mr. Cunningham, Mr. G. Tracy Rogers and several former employees of the firm, established the following:

First.— The firm of Ellingwood & Cunningham was formed in 1893 for the purpose of doing a general brokerage business, having offices at No. 41 Wall street, New York city. It was composed of C. H. Ellingwood and James W. Cunningham, until the year 1900, when G. Tracy Rogers was admitted as a special partner on his investment of $100,000 cash in the firm. In October, 1902, Mr. Ellingwood retired from the firm and in January, 1905, Mr. Rogers retired. Whereupon Mr. F. M. Black, one of the clerks of the firm, became a general partner. Some six weeks thereafter the firm made an assignment for the benefit of its creditors. Subsequently an involuntary petition in bankruptcy was filed against the firm in the United States District Court for the Southern District of New York, which was withdrawn some sixty days later, after a settlement had been made by the firm with its creditors.

Second.— During the time G. Tracy Rogers was a special partner, several members of the Legislature and other persons interested in legislative affairs had accounts with the firm. Many of these accounts appeared regular in all respects and contained no unusual items which called for explanation. Others, to which

reference is hereafter made, were evidently carried primarily not for the purpose of dealing in stocks and securities, but for the purpose of facilitating and concealing the transfer of moneys to the legislators in whose names the accounts stood.

Third.— At the time G. Tracy Rogers became a special partner, he was the president of the Street Railway Association of the state of New York, an association organized in 1883, and still in existence, the ostensible purpose of which was the acquisition of experimental, statistical and scientific knowledge relating to the construction, equipment and operation of street railroads and the diffusion of this knowledge among the members of the association. The membership of this association comprised nearly all the important street railway companies within the state, together with certain associate and allied members consisting of individuals, co-partnerships and corporations, engaged in the manufacture, selling and dealing in railway supplies and materials. Mr. Rogers continued as president of this association from 1894 until 1903.

Fourth.— During Mr. Roger's encumbency of the office of president of the association, he represented it at Albany during the sessions of the Legislature in matters of legislation affecting its members. Shortly after he became president, upon his suggestion and with the approval of the executive committee a system was inaugurated of levying assessments upon the various railroad companies which were members of the association in proportion to their gross earnings, to raise funds with which to promote the interests of these members of the association in matters of legislalation. At first these assessments were fixed at one-tenth of one mill upon the gross earnings. Later this was raised to two-tenths of one mill, and, in addition thereto, from time to time, as, in the judgment of the president, exigencies required, special assessments were laid on the members for the purpose of raising additional funds. Many of the books and records of the association, including minutes of the secretary, records of the treasurer, and correspondence of its officers have been lost or destroyed. The officers testified that they were unable to produce them, and were ignorant of the cause or manner of their disappearance. On account of the loss of these records, the exact amount contributed

by the members of the association to this fund cannot be ascertained, but that it was large appears from the fact that during the months of June and July, 1903, $25,000 was forwarded to Ellingwood & Cunningham and by them placed to the credit of legislators.

Fifth.— The distribution of this fund was wholly under the control of the president of the association and he was not called upon at any time to account, either to the executive committee or to the association, for the manner of its use. There were three methods used in transferring these funds, namely:

a. By depositing from time to time with the firm of Ellingwood & Cunningham sums of money directly to the credit of these members of the Legislature, which sums were subsequently either withdrawn by them, or used by them for the purpose of trading in stocks and bonds.

b. By depositing from time to time with the firm of Ellingwood & Cunningham to the credit of a confidential clerk of the firm, sums of money which were subsequently transferred to the accounts of these legislators.

c. By making contributions directly to the campaign funds of the political parties in the districts represented by these members of the Legislature, and to the funds of the state committee of the dominant parties.

Sixth.— Henry A. Robinson, attorney for the Metropolitan Street Railway Company of New York, was the secretary and treasurer of the association from 1894 to June, 1903. In June, 1903, Robinson resigned as treasurer and the executive committee of the association selected a new treasurer to act until the annual election of officers in October of that year. In October, 1903, an entirely new set of officers were elected by the association and a new policy adopted, at least temporarily. The levying of assessments was apparently abandoned. This change of policy was evidently a matter of "policy," since the evidence shows that the collection of the unpaid assessments continued.

Various methods were resorted to by the treasurer and the members of the association to cover up these assessments, and among others may be noted, the assessment of $8,000, collected in

July, 1903, from the Metropolitan Street Railway Company on behalf of the Third Avenue Railway Company. The evidence shows that in order to conceal the real nature of the transfer of $8,000 of the moneys of the Third Avenue Railway Company for legislative purposes, the following ingenious and despicable method was adopted: A voucher and draft for this amount was drawn to the order of the treasurer of the Street Railway Association, as attorney, in settlement of a fictitious claim for personal injuries to one Charles Lankeman. It recited upon the face of the voucher that the injuries were received by Lankeman "On May 1st, 1902, at 99th Street and Third Avenue, on car 247, run 70, trip No. 1, north-bound: that the claimant, a passenger on the car, was standing on the rear platform: that the car came to a stop at 99th Street and started with a sudden jerk, throwing the claimant from the rear of the car to the street, which resulted in injuries to his back and spine, shock and contusion."

The treasurer of the Street Railway Association indorsed this draft *as attorney* and also indorsed it *as treasurer of the association,* and deposited it to his credit as treasurer, and it was paid in due course. Later this money found its way into these accounts carried by Ellingwood & Cunningham.

The treasurer of the Street Railway Association testified that he never knew Mr. Lankeman, and never had heard of any such person, or accident, that he was not an attorney-at-law, nor was he the attorney-in-fact for Mr. Lankeman, and knew nothing about any such accident. An examination of the officers of the company failed to reveal that any such accident had ever occurred or that there was any such person as Mr. Lankeman. This was evidently a mere invention and subterfuge for the purpose of concealing the transfer of this $8,000 by the Metropolitan Street Railway Company to the treasurer of the association for legislative purposes.

The surviving records of the association were so meagre and fragmentary and the disappearance of the great bulk of them so extraordinary and inexplicable as to raise a grave suspicion that similar methods may have been resorted to at other times.

It would seem that in deference to the new order of affairs in

matters of legislation and public service, the association, in 1904, permanently abandoned the methods which it had followed in matters of legislation.

Seventh.— On the 16th day of March, 1900, a bill was introduced in the Senate, entitled:

> "An Act to amend the Transportation Corporation Law by addition thereto of a section in relation to extending roads and extensions."

This bill passed the Senate on March 29, 1900. On the date of its passage it was transmitted to the Assembly and was immediately reported by the committee on rules, and passed by the Assembly on April 5, 1900, the day before the final adjournment of the Legislature. It subsequently became a law and constitutes chapter 567 of the Laws of 1900. Under this act it became possible for the New York Transportation Company, a public service corporation, operating in the city of New York, to greatly extend its franchise.

It appears from the books of Ellingwood & Cunningham, that prior to the passage of this act and shortly thereafter several members of the Legislature, some of whom were members of the committee on railroads and of the committee on rules, came into the possession of a large amount of stock of this company. These blocks of stock so held were at least in two instances purchased through Ellingwood & Cunningham and paid for by Rogers with the proceeds of a check received from the president of the Metropolitan Street Railway Company. In other cases, the stock was deposited by members of the Legislature with Ellingwood & Cunningham and carried by them until May, 1901, when a pool of 1,400 shares, made up of the holdings of various members of the Legislature and other persons connected therewith, were delivered to a member of the committee on railroads of the Senate and by him sold to an unknown purchaser at 14, at a time when the same stock was selling in the open market at 4½, and the following month sold down to 1¼.

This bill, though general in its character, could possibly affect no corporation except the New York Transportation Company. It was introduced by a Senator who represented no part of the

territory in which this corporation operated. He testified that it was handed to him by a Senator also representing a district wholly without the territory in which this company operated; that he neither asked nor received from the Senator who gave it to him any statement or explanation as to its provisions or the source from which it came.

Eighth.— The evidence shows that between April, 1900, and March, 1903, the account of the chairman of the committee on railroads in the Assembly during those years was credited upon the books of Ellingwood & Cunningham with the sum of $24,281, none of which came from him directly, but all of which was contributed either by checks of the president or attorney of the Metropolitan Street Railway Company or the treasurer of the Street Railway Association, or by the checks of the president of the Street Railway Association.

The evidence also shows that the account of a member of the committee on railroads of the Senate was credited on the books of the firm of Ellingwood & Cunningham, between April, 1900, and July, 1904, with $24,800, all of which came through checks of the president of the Metropolitan Street Railway Company or the attorney of said company or the treasurer or president of the Street Railway Association.

The explanation of these accounts given by the persons in whose names they were carried and by Rogers, were that these transfers were made by Rogers either in payment of his personal indebtedness to them or as political contributions, and that they had no knowledge of the sources from which he obtained the money.

It is apparent that the firm of Ellingwood & Cunningham was used during these years by Rogers, acting for the Street Railway Association, as a clearing house through which to transfer money from the treasuries of the various railroads belonging to the association to the individual accounts of certain members of the Legislature and political organizations, whom they deemed useful in the protection and promotion of their interests in matters of legislation.

II.

Corruption and Corrupt Practices Shown to Exist by the Evidence in the Investigation had by the Senate During the Regular Session of 1910.

An examination of the evidence received in the investigation had before the Senate during the regular session of 1910 shows that all matters therein developed indicating corrupt practices were fully explored either upon the direct or cross-examinations of the witnesses, save the allegations with reference to alleged irregularities in the purchase of State lands, which was made the subject of special investigation by the Executive.

The chief prosecuting witness before the Senate was examined at length by the Committee and his examination, although exhaustive, elicited no facts indicating corrupt practices other than those concerning which he had testified before the Senate. At the close of his examination he stated that he had no knowledge of any other corrupt practices in connection with legislation or public officials.

Some additional facts, however, were developed by the examination of this and other witnesses, concerning the attempt made in 1905 by certain bridge companies doing business in this state to raise by assessment a fund of $10,000 for the purpose of influencing legislation. It appears that a meeting of the representatives of these companies was held at Syracuse, in January, 1905. After considerable discussion they decided to raise a fund of $10,000 for this purpose. A custodian of the fund was appointed and the sum of $1,950 paid in. The scheme was subsequently abandoned on account of the failure of some of the companies to pay their assessments, and the money raised was returned to the contributors.

III.

Allegation of Corrupt Practices in Connection with Legislation Relating to the Payment by the State of a Beet Sugar Bounty.

On the 3d day of August, 1910, at a hearing held at Geneva, N. Y., before Charles A. Hawley, Esq., Referee in Bankruptcy,

in a proceeding against the Lyons Beet Sugar Refining Company, a corporation formerly engaged in the manufacture of beet sugar at Lyons, in the state of New York, Harry F. Zimmerlin testified that in the years 1905 and 1906 he paid to two members of the Legislature, on behalf of the company, certain sums of money in consideration of their action, at the sessions of the Legislature for those years, upon matters of legislation affecting the beet sugar industry.

This fact having come to the attention of the Committee, a thorough investigation of the evidence and proceedings had in bankruptcy, together with the books, records and correspondence of the company was made. The book-keeper and treasurer of the company, together with its former presidents, were examined.

It appears from the evidence of Zimmerlin that for several years the company employed him to attend the sessions of the Legislature to promote legislation giving a bounty for the production of beet sugar in this state.

He testified that shortly after the adjournment of the Legislature in 1905, he paid, at the Capitol, $3,000 in cash to a member of the Senate, and $3,000 to a member of the Assembly, of which latter amount $1,500 was for the member's use and the other $1,500 was "to use as he saw fit." This money, he stated, he had received from the president of the company for this purpose. On the morning following the day when he gave this evidence, he asked leave to correct this testimony, stating that he then recollected that the amount which he paid to the member of the Assembly was $1,500 instead of $3,000. He further testified that after the session of 1906 and also after the session of 1907, at which sessions similar appropriations were made, he paid the same member of the Senate $3,000 each year, and that he also paid an employee of the Assembly the sum of $300, in 1905, and in 1906, $250.

Frederick Steigerwald, who was the president of the company during these years, was examined and testified that after the adjournment of the Legislature in 1905, 1906 and 1907, Zimmerlin requested of him these sums of money for the purpose of payment to the members of the Senate and the Assembly mentioned by him, and that in response thereto he delivered to him

for that purpose in the years 1905, 1906 and 1907 drafts for the sums mentioned.

A searching examination of the books and records of the company, together with an exhaustive examination of the witnesses called before your Committee, failed to elicit any corroborative evidence. The evidence of Zimmerlin, who testified as to these alleged payments, was singularly incomplete with reference to the details of each of the transactions. He could not recollect any material extrinsic circumstances or facts surrounding them. Moreover, the evidence reveals that notwithstanding appropriations had been made for this purpose at each annual session of the Legislature from 1897 to and including the session of 1908, no other suggestions relative to payments in other years were ever made, although Zimmerlin testified that he was present at Albany actively promoting similar legislation in each of the years mentioned, during which time the members accused were members of the Legislature.

The Committee is impressed with the significance of the fact that each of the legislators to whom it was alleged payments were made is dead, and unable to face his accuser.

In the absence of corroborative evidence and in view of the appearance of the witness Zimmerlin upon the stand, his manner of testifying, and his very apparent confusion of mind, the Committee cannot conclude or report that these payments were made to the members as alleged.

IV.

Allegation of Corrupt Practices in Connection with the Anti-Race Track Gambling Bills During the Regular and Special Sessions of the Legislature of 1908.

The wide-spread publication in the public press of rumors and assertions that a corruption fund amounting to several hundreds of thousands of dollars had been raised for the purpose of preventing the passage of the anti-race track gambling bills, pending at the regular and extraordinary sessions of the Legislature in 1908, together with admissions made by persons active in opposition to these bills which were brought to the attention of the Com-

mittee, led it to enter upon an investigation of the truth of these rumors and accusations.

In the course of this investigation it called and examined all persons whom it was believed had any knowledge or information upon the subject and also caused to be examined the books and records of various racing associations in the state of New York, together with the books and records of the Metropolitan Turf Association.

The evidence shows that in 1908 one Frank J. Gardner was a lobbyist at Albany, and that he was retained to attempt the defeat of the anti-race track gambling bills. It further appeared that Gardner and certain other persons associated with him established themselves in a hotel in Albany and either directly or through others approached a number of legislators with offers of large sums of money in consideration of their voting against the passage of these bills. The Committee has been unable to definitely fix the amount of money at the disposal of Gardner and his associates, but it appears in the evidence, that Gardner offered to one legislator as a consideration for his vote against the bills, the sum of $100,000.

When the Committee entered upon the investigation of this matter, it discovered that Gardner was without the state, and, therefore, beyond the reach of a subpœna. The Committee located him in a city in a sister state, and, when it ascertained that he would not return voluntarily to the state, it gave the district attorney of the county of New York sworn information which resulted in the indictment of Gardner in the county of New York, for the crime of attempted bribery.

The district attorney at once caused Gardner's apprehension in the foreign jurisdiction where he then was and instituted extradiction proceedings, but, before such proceedings were terminated, Gardner voluntarily returned to the county of New York, where he was arraigned and admitted to bail. The Committee immediately caused a subpœna to be served upon Gardner, directing him to appear before it. He appeared, was sworn, but refused to give any testimony on the ground that he was then under indictment, and that any evidence he gave might tend to incriminate or degrade him. Under these circumstances the Committee pro-

ceeded to examine other witnesses whom it was informed had knowledge of Gardner's activities in Albany in connection with the attempt to defeat these measures.

It had come to the attention of the Committee, that in the spring of 1910, while Robert H. Elder, Esq., an assistant district attorney in the county of Kings, was making an investigation relative to the prosecution of certain indictments which had been found by the grand jury of the county of Kings, that Gardner had admitted to Mr. Elder that he was actively engaged in Albany in 1908 in endeavoring to prevent the passage of the anti-race track gambling bills.

Mr. Elder was called to give evidence of these admissions of Gardner. He testified that in March, 1910, Gardner had stated to him that during the pendency of these bills a meeting was held in the city of New York, at which various persons interested in racing and representatives of the Metropolitan Turf Association were present, and that a fund was then subscribed aggregating several hundred thousands of dollars for the purpose of preventing the passage of these bills; that $10,000 was paid to one legislator for his vote and large sums of money were disbursed to other persons for the purpose of bringing about the defeat of the measures.

It also appears from testimony given by other witnesses that Gardner was in Albany during the pendency of these measures before the Legislature; that he approached several members thereof with offers of money in consideration of their votes against the measures and sought to induce other legislators to meet him at his room in the hotel where he was making his headquarters. It further appeared that he exhibited in his hotel a large sum of money, which, he said, was to be used to secure votes against the bill.

Gardner, in the admissions made by him to Mr. Elder, mentioned the names of several legislative correspondents, of the public press and others, to whom, he said, sums of money had been paid. This evidence was not corroborated and in each instance these persons appeared voluntarily before the committee and denied *in toto* the truth of this statement.

The Committee sought to examine each of the persons whom Gardner stated were present at the meeting held in New York

when the fund for the purpose of preventing the passage of these measures was said to have been subscribed, but by reason of their having left the jurisdiction of your Committee, and their continued absence therefrom when their presence was desired, and their failure to return up to the time your Committee's power to call and examine witnesses expired, it was unable to obtain their evidence.

There is also evidence tending to show that other attempts were made to induce members of the Legislature to vote against these measures, and that as much as $45,000 was offered one member of the Senate in consideration of his either opposing the bills or refraining to vote in favor thereof, and upon his refusal a threat was made that he would not be renominated at the ensuing election.

The Committee examined the books and records and some of the officers of the Jockey Club, and of the various racing associations in the state. The evidence shows that these organizations in their opposition to these bills expended large sums for publicity in order to create public opinion in opposition to the measures. It appears that one of the eight racing associations expended some $17,000 for the purpose. The aggregate legal expenses of these bodies in 1908 amounted to about $162,000. There is no evidence, however, that any of these expenditures were for illegal purposes.

The Committee endeavored to examine the officers of the Metropolitan Turf Association and its books and records, but the only officer of the association which your Committee could reach with subpœna was the treasurer, who testified that all the books and records of the financial dealings of the association that were ever kept had been destroyed with the exception of a single check-book.

V.

Allegation of Corrupt Practices in Connection with Amendments to the Agricultural Law with Reference to Milk During the Session of 1909.

The Committee's attention was called to the fact that in a proceeding pending in the Supreme Court of the County of New York, entitled "In the Matter of the Petition of Edward R.

O'Malley, Attorney-General of the State of New York, for an order directing Charles H. C. Beakes and others to appear before a referee for examination pursuant to article 22, chapter 20, of the Consolidated Laws of the State of New York, known as the General Business Law," conducted during the months of January and February, 1910, certain testimony had been given tending to show that a fund of money had been raised by milk dealers operating in Greater New York, for the purpose of opposing the enactment into law of an amendment to the Agricultural Law of this state, which was subsequently passed and became chapter 9 of the Laws of 1909, providing, in brief, that milk and cream should contain 12 per cent. solids and that the production, sale and distribution of milk and cream should be subject to certain State inspection.

An investigation into these allegations was made, witnesses examined, and an effort made to examine the books and documents of certain milk dealers' associations. It appeared that prior to October 1, 1909, there was in existence an incorporated organization called the Milk Dealers' Protective Association, which numbered among its members about twenty-five wholesale milk dealers in the city of New York. The evidence also showed that about October 1, 1909, three other milk dealers' associations were formed, to wit: The Harlem and Bronx Milk Dealers' Association, the Brooklyn Milk Dealers' Association, and the West Side Milk Dealers' Association, the members of which associations were likewise wholesale milk dealers operating in Greater New York.

When the Committee sought to examine the books and records of the Milk Dealers' Protective Association it was found that it could not obtain the books and records of that association antedating October 1, 1909, and the secretary of that association testified that such books and records had been destroyed by him.

From such books and records, however, as were produced, it was made to appear that during the years 1909 and 1910 these four milk dealers' associations levied upon their members assessments ranging from twenty-five to fifty cents for each can of milk sold by each member on a certain day, and by that method there was raised about $10,000. It was further developed that more than

one-half of this amount remains in the hands of the officers of that association and that the balance had been expended for defraying the expenses of collecting lost cans belonging to members of the association and in conducting analyses of milk distributed in this territory.

The evidence given and such records as the secretary of the association did not destroy, does not show that any of this money so collected by assessments or any other money has been used corruptly in any attempt either to oppose or promote the passing of the amendment to the Agricultural Law above mentioned, or any other law pending before the Legislature.

Numerous allegations and rumors, anonymous and otherwise, of corrupt practices in connection with other matters of legislation, came to the attention of the Committee, and considerable time of the counsel and other assistants of the Committee was consumed in endeavoring to ascertain whether or not there was any substantial evidence in support of these allegations and rumors.

The investigation shows clearly the extreme difficulty of securing exact information which will disclose the methods by which powerful financial interests seek to control legislative action in matters coming before legislative bodies.

The crime of bribery is one of the most difficult of all crimes to uncover. All the resources of ingenuity are used to conceal it, and only in exceedingly rare instances are either of the parties to the crime willing to come forward and disclose the facts.

The statute requiring corporations and associations doing business in the state to file with the Secretary of State itemized annual statements duly verified, showing in detail all expenses paid and incurred in connection with legislation pending at the previous session of the Legislature, including disbursements or compensation paid or payable to counsel or agents, although not always complied with, has undoubtedly been a powerful influence in correcting conditions which may have existed in the past. The statute has produced a degree of publicity which did not exist previous to its enactment, and it is to publicity more than to anything else that the public must look for the prevention of conditions directly encouraging improper relations between members

of legislative bodies and financial interests which may be affected by legislative action.

Legislative procedure, so far as the state of New York is concerned, is improving. It is more deliberate, and the records of legislative proceedings in committee and otherwise are more carefully made and preserved. The recent revision of the Rules of the Senate and Assembly are steps in the right direction, and in view of these amendments your Committee makes no suggestions at this time.

The evidence before the Committee satisfies it that legislative methods and conditions have greatly improved, and it believes that an aroused and enlightened public sentiment will result in further advances in the adoption of other and further measures tending to minimize the opportunity of outside interference in legislative procedure.

The establishment of the Public Service Commission and the giving to various departments of State government a larger control of public institutions and activities has decreased measurably the field of operations of the lobbyist. An opportunity is now given to all parties interested in the administration of public business for impartial and deliberate consideration of their rights, interests and obligations. Questions of importance receive a degree of consideration which is impossible for them to have in the somewhat hasty deliberations of legislative bodies. All proceedings become a matter of permanent record, and whether before a public service commission or some other department of State government, subjects in which the public is interested and their relations to public and private interests are given a degree of careful consideration very similar to that which takes place in courts of justice and to some degree under rules similar to those governing the action of our courts.

In concluding its report on this branch of the investigation, the Committee suggests that the most effective preventative of legislative corruption rests with the people themselves — a searching scrutiny of the fitness of candidates and a strict accountability of representatives to their constituents.

In view of the facts established by the evidence the Committee recommends that article 124 of the Penal Law be amended by the addition of a new section providing that if a member of either House composing the Legislature of this state shall be offered a bribe, or any money, property or value of any kind, in consideration of his vote, or of his absenting himself from the House of which he is a member, or from any committee thereof, or if any person shall attempt, directly or indirectly, by menace, deceit, suppression of truth or other corrupt means, to influence a member to give or withhold his vote or to absent himself from the House of which he is a member or from any committee thereof, such member shall immediately, if the House of which he is a member be in session, or at the next session thereof, submit the facts in relation thereto to the House of which he is a member, and to the district attorney of the county in which the offer or promise was made, and that a violation thereof shall be punishable by imprisonment for not more than ten years or by a fine of not more than $5,000, or both, together with a forfeiture of his office, and disqualification from ever afterward holding any office under this state.

FIRE INSURANCE.

PART I.

INTRODUCTION AND GENERAL OUTLINE OF THE BUSINESS.

Introduction.

The investigation which was made by the Superintendent of Insurance in the spring of 1910 concerning the legislative activities of fire insurance companies brought into prominence the fact that the companies were strongly against certain bills which are proposed at nearly every session of the Legislature; these are commonly known as "anti-compact" and "valued policy" bills.

When this Committee was created by the Legislature and directed, among other things, to investigate the subject of fire insurance it was very largely in the hope that these questions could be thoroughly studied and that conclusive grounds could be found either for passing such measures or for rejecting them.

Both for this reason and because of the great importance of fire insurance to citizens of all classes your Committee gave a great deal of careful attention to this side of the inquiry.

The public hearings on fire insurance began on the 22d day of November, 1910, and ended on the 6th day of January, 1911. Altogether, 117 witnesses were examined, representing all the interests involved,— the premium payers — the insured, officers and managers of companies, mutual fire insurance underwriters, managers of rating bureaus, expert raters, adjusters, statisticians, local agents, brokers, interinsurers, attorneys-in-fact for Lloyds, New York State Insurance Department officials, insurance commissioners of other states, fire department officials, officers and members of fire prevention associations, merchants, officers of trade organizations and others. Leading men in their special lines the country over were examined and conditions in New York state were thus compared with those existing in Massachusetts, Rhode Island, Pennsylvania, Ohio, Illinois, Missouri, Wisconsin, Texas and Michigan.

In considering the proper scope of this inquiry the Committee first satisfied itself that the Superintendent of Insurance and his

corps of examiners had brought before the public all matters pertaining to fire insurance legislation, which gave evidence of or tended to establish any improper attitude on the part of the companies toward legislation. The record of the testimony taken before the Superintendent of Insurance is voluminous and shows that this phase of the question was treated exhaustively. It was, therefore, deemed of more public importance to direct the Committee's inquiry toward the economic problems of the business.

It may be said at the outset that the subject of fire insurance differs from that of life insurance, concerning which an exhaustive legislative investigation has been had in recent years, in one very important particular. In life insurance, because of the fact that the contract stretches over a great number of years and that the premiums in the early years of the policy must be largely laid aside against the latter years, it is necessary to collect a very large reserve. The records of the Insurance Department show that in each of the three large New York life insurance corporations the reserve amounts to more than four hundred million dollars. In fire insurance, however, as the contract is made from year to year, or at any rate for a very short term, the entire reserve is small in comparison, amounting on all of the 163 stock companies doing business in this state to only about two hundred and thirty-three million dollars — hardly more than half the reserve of a single one of the life insurance companies. The temptation to use the large funds at its disposal in a questionable manner, which was shown to have been, at the time of the investigation, one of the weak points in the system of life insurance, does not exist in fire insurance, for the reason that the large funds do not exist.

The Committee, recognizing the technical character of the subject and the desirability that it should be presented in a logical and consecutive manner, attempted, so far as it was possible, to take up its details according to the following plan:

The companies and their relation to the State — State supervision.

Statistics regarding the amount and character of the fire insurance business.

The organizations among the companies.

The principles involved in the furnishing of fire insurance indemnity.

The interior organization of a company — its officers and agents.

The actual detailed work of a company — getting and doing business.

The settlement of losses — adjusting.

The theory of rating.

Rating organizations.

The New York Fire Insurance Exchange.

The Suburban Fire Insurance Exchange.

The Underwriters' Association of New York State — the Upstate Association.

Factory Mutual Insurance Companies.

Miscellaneous Mutual Insurance Companies.

Town and County Co-operative Insurance Companies.

Interinsurance Associations.

Lloyds.

Local agents and their problems — the expense problem.

Brokers.

Complaints by the insured and the answers thereto by the companies.

Fire prevention.

The problems of the business, so far as they concern the State, are mostly in regard to the so-called stock fire insurance companies, and not only that but they are largely concerned with the subject of rating and expense. In this report the discussion of the matters concerning which testimony was received will be made to center around these problems. In Part I of this report will be given an outline of the business and in Part II a more careful analysis of the problems involved.

Extent of the Business.

It is impossible to know exactly the magnitude of the fire insurance business. The following figures, however, are suggestive:

One hundred and sixty-three stock companies, licensed to do business in this state, had risks in the United States on December 31, 1909, aggregating over forty billions of dollars; on these,

during 1909, they received net premiums amounting to about two hundred and seventy-one millions of dollars.

Besides these companies there are other stock companies, not admitted to this state, mutual companies, interinsurers and Lloyds, which must bring the total amount at risk in this country well up toward fifty billions of dollars.

Importance of Fire Insurance.

The importance of the business of fire insurance can be inferred from the fact that the annual fire loss of this country is in the neighborhood of two hundred and fifty millions of dollars — a destruction equivalent, in relation to the building operations of the country, to a destruction of one house out of about every four that are built. Fire insurance is an agency for distributing this loss over the whole community, so that it shall not deal a crushing blow to those who have suffered. The importance of insurance has, however, gone far beyond the point of being simply a system of distributing loss; it is quite as important because of its *potential* indemnity, that is, because of the state of security which it produces.

It is readily recognized that to-day the financial operations of the world are on a basis of credit. A paralysis of credit produces disastrous results, in panics and financial depressions. The credit system, however, is founded on the institution of insurance; without insurance it would be impossible to get a loan on a cargo of wheat or to mortgage a house or for a retailer to buy on time-payment a bill of goods from a wholesale merchant. Insurance is the foundation of the modern credit system, and by just so much as the welfare of society is founded on the free operation of credit by so much is the institution of insurance of importance to the public, quite aside from its value in actually distributing loss.

Organization and Admission of Insurance Companies.

The Insurance Law of the state of New York provides for the organization in this state, or the admission from other states or countries, of several classes of insurance organizations.

First. So-called stock companies. These are corporations organized to do the business of fire insurance. Such a company of

this state, to be organized, or of other states, to be admitted, must have a capital of at least $200,000 and a surplus equal to at least 50 per cent. of the capital.

There were on December 31, 1909, 44 such companies of New York state, having a total amount at risk of about eleven and one-half billions of dollars. There were 88 companies of other states, having a total amount at risk of about eighteen billions of dollars.

The 132 stock companies doing business in this state had risks the country over aggregating twenty-nine and one-half billions of dollars, net premium receipts in 1909 of about two hundred millions of dollars, an aggregate capital of about sixty-nine millions of dollars, and aggregate assets of about four hundred and six millions of dollars.

Second. United States branches of foreign companies. Such companies are required to have $200,000 deposited with State Insurance Departments, and $300,000 in the hands of trustees in the United States.

There were on December 31, 1909, thirty-one such companies admitted to do business in this state. Their aggregate amount at risk was ten and one-half billions of dollars, their net premium receipts in 1909 about seventy-one millions of dollars, their total assets about one hundred and seven millions of dollars.

Third. On December 31, 1909, there were five mutual companies of this state with an aggregate amount at risk of about twenty-four millions of dollars and aggregate assets of about six hundred and sixty-five thousand dollars. There were two mutual companies of other states with an aggregate amount at risk of one hundred and forty-five millions of dollars and aggregate assets of about two and one-half millions of dollars.

There are at present about 175 town and county co-operative companies of this state. The total amount at risk is not obtainable at present; officers of two companies who appeared as witnesses before the Committee testified that their companies had total risks respectively of seven million dollars and fifteen million dollars.

Fourth. The state to-day permits such Lloyds and interinsurance associations as were organized prior to October, 1892, to do business upon certain conditions specified in article 10 of the In-

surance Law. In general it may be said that conditions governing these bodies of insurers are similar to those governing stock companies, with the exception that no capital stock or guarantee fund beyond the unearned premium reserve is required.

The Department has recognized seventeen Lloyds associations; on December 31, 1909, these had aggregate risks of one hundred and fifty-two millions of dollars. The state has recognized three interinsurance associations; on December 31, 1909, these had aggregate risks of one hundred and forty-seven millions of dollars.

While these are all the fire insurance organizations which are expressly recognized by this state, it should be added that there is a considerable amount of insurance which is placed with foreign Lloyds and stock companies, not admitted to this state, and with the factory mutual companies.

In addition to the conditions already mentioned the state requires the companies to maintain funds sufficient to cover the unearned portion of the premiums it has received on outstanding business. The purpose of this unearned premium reserve, as it is called, is threefold: first, to make it possible to pay policyholders what is due them should they desire to cancel their policies; second, to secure for the company a sufficient fund to reinsure its business with another company if that should be desirable; and, third, to protect a company against expected losses.

The Superintendent of Insurance is required, as part of the work of seeing that the companies are solvent and otherwise within the requirements of the law, to call for an annual financial statement from each of the companies and associations that are recognized by the Department, and he is directed to examine the affairs of each company in detail from time to time or as occasion demands.

Organizations Among the Companies.

The stock fire insurance companies, while they are in intense competition with each other, have found it desirable to do much of their work through organization among themselves.

The National Board of Fire Underwriters.

In point of territory covered the greatest of these is the National Board of Fire Underwriters. The membership of this embraces

124 of the leading companies. It has been in existence since 1866; in its early years it endeavored to fix both rates and commissions for the whole of the United States, but this work proved impracticable and was abandoned. Its principal function to-day is educational, although to a certain extent it exerts a general influence toward uniformity and better practices in the business. It is the representative body which acts for the underwriters in matters of general importance to the companies and the public. The National Board was represented, for instance, at the Joint Conservation Conference in Washington in 1908 and at the National Conservation Congress in St. Paul in 1910; at both meetings the board presented through special committees addresses on the subject of fire-waste.

The board, through a corps of engineers, carries on an extensive work in making surveys of the conflagration hazard in cities. A report is issued on each city surveyed; this report is a basis for intelligent work in the betterment of conditions.

The board, after an extensive study of the subject, has prepared a model building code; the adoption of this code is urged upon cities and the board is prepared to co-operate further by furnishing expert advice along these lines.

The board prepares statistics of fire loss and the causes of fires.

It is in close touch with the National Fire Protection Association and the Underwriters' Laboratories and issues a great number of pamphlets, based on the work of these organizations as well as on the work of its own engineers, on the construction and installation of devices of a protective or hazardous nature; these pamphlets are given a wide circulation.

It can be said that the work of the National Board is in the highest degree public spirited and its activities are to be highly commended.

The New York Board of Fire Underwriters.

The New York Board of Fire Underwriters is an incorporated body; its members are the managers and agents of companies doing business in New York city. It carries on somewhat the same kind of work as the National Board, but its field of operation is confined to New York city.

It makes surveys of risks, promulgates standards of construction and equipment, and particularly of electrical equipment; it investigates important fires, it maintains a bureau of fire patrol, whose function is to protect and save property in case of fire; it maintains a bureau of adjustments which settles losses on which several companies are involved; it interests itself in matters concerning water supply, the fire department, the fire alarm service, and the origin of fires. The board is represented by a delegate to the board of examiners of the building department.

The New York Fire Insurance Exchange.

The New York Fire Insurance Exchange is an unincorporated body; it was organized in 1899; it comprises in its membership officers of local fire insurance companies and managers and head agents of out-of-town companies. Practically all the companies admitted to this state which do business in New York city are represented in this body.

The area of operation of the Exchange is the so-called metropolitan district, or substantially the present city of New York exclusive of its suburban or outlying portions; in other words, the borough of Manhattan, that part of the borough of the Bronx lying west of the Bronx river, the borough of Brooklyn, Long Island City in the borough of Queens, and the American Dock Stores and piers in the borough of Richmond.

The object of the Exchange is the control of rates and commissions to agents and brokers; it fixes either specific or minimum premium rates on risks; it fixes the compensation of brokers and certain classes of agents. Certain branch office managers, so called, are allowed a commission of 12½ per cent. in addition to what they pay to brokers, and brokers are paid a commission of 5 to 25 per cent., graded according to location and class of property. The highest commission, 25 per cent., is paid upon the so-called "preferred risks," namely, dwellings and private stables, churches, schoolhouses, and combined store-and-dwellings.

The Exchange issues certificates to brokers whom it approves and without this certificate it is impossible for a broker to do business with its members. The conditions upon which a certificate

is granted are first, that the broker must be engaged either exclusively in the insurance business or in real estate or closely allied employments, second, he must pledge himself not to make any rebate to or division of commissions with any assured or any person not a broker, third, he must pledge himself that he will not accept from any company or agent more than the commission allowed by the Exchange; fourth, he must pledge himself that he will not place risks with offices not members of the Exchange, unless sufficient insurance thereon cannot be obtained from Exchange members. The two pledges are given herewith:

Brokers' Pledge, Class I.— In consideration of the commissions or brokerages at the current rate that may be fixed and established for the time being by, and to be paid by members of, the New York Fire Insurance Exchange, I hereby promise and agree that I will not, directly or indirectly, make any rebate to the assured nor directly or indirectly pay to or divide with any person not holding a broker's certificate, any commission or brokerage, nor will I receive from any company or agent, directly or indirectly, any remuneration for business placed with them in excess of that permitted by the rules of the Exchange.

Brokers' Pledge, Class II.— In consideration of the payment to be made to me of an additional 5 per cent. to the commissions or brokerages as provided for in broker's pledge, Class I, signed by me, I hereby promise and agree in addition to said pledge, that in placing insurance, I will give the preference to the members of the New York Fire Insurance Exchange, and that I will not place any risk with those not members unless I cannot secure sufficient insurance on such risks from members of the Exchange, in which case I agree to file with the secretary of the Exchange, within one week of so placing, a list of such outside company or companies in which same has been placed, with the name of the assured, location of risk and the amount of insurance given them.

About 7,500 brokers are at present certificated by the Exchange; the fee for the certificate is $10. About five-sixths of the buildings in the territory of the Exchange are given minimum, that is, non-schedule, rates according to the nature of the occupancy; these in general are the so-called "preferred risks." The

remaining 50,000 buildings, comprising mercantile, manufacturing and other general hazards, are rated specifically, or by "schedule;" that is, the rate is built up for each building or stock by a detailed analysis of the hazard. The general subject of schedule rating will be treated in Part II of this report.

An addition to the rate as otherwise determined may be made as a charge for local conditions, such for instance as bad streets or deficient water-supply, or an addition such as the "San Francisco Advance" made in 1906 in order that the companies might recoup themselves after the San Francisco conflagration.

In Part II of this report the subjects of rating, commissions and brokers will be discussed in detail; this discussion will apply to the New York Fire Insurance Exchange; further observations on the subject of the Exchange will be found in Part III among the recommendations.

The Suburban Fire Insurance Exchange.

The Suburban Fire Insurance Exchange is an unincorporated association of companies; its purpose is to control premium rates and commissions to agents and brokers. Its territory consists of Westchester county, Putnam county, Rockland county, Richmond county, the portion of the borough of the Bronx east of the Bronx river and all of Long Island outside the borough of Brooklyn.

The Exchange was founded in 1907; prior to that, since 1900, there had been in this territory a period of open competition. The membership of the Exchange comprises about 140 companies; not all the companies writing in this territory are members of the Exchange.

The Suburban Exchange is modeled on the New York Fire Insurance Exchange. The two pledges required of brokers are the same that are required by the New York Exchange. The Suburban Exchange allows all local agents a 20 per cent. commission; brokers who have signed the first pledge are allowed 5 per cent. commission, and those who have signed both pledges are allowed 10 per cent. commission.

About 145,000 risks, estimated to represent about 75 per cent. of the premium income in suburban territory, are rated under a system of minimum classification which in effect is a very simple

form of schedule rating. The remaining risks, about 5,000 in number, in general are rated by schedule.

The Underwriters' Association of New York State.

The Underwriters' Association of New York State is an unincorporated association of the special agents, or fieldmen, of fire insurance companies; its headquarters is Syracuse; its territory consists of all the counties north of Putnam and Westchester, excepting the cities of Buffalo and Tonawanda. The association has 124 members representing eighty-four companies; it was founded in 1884.

The object of the association is the making and control of premium rates, the promotion of co-operation among fieldmen and of good practices in the business.

The local boards of underwriters, composed of local agents are under the supervision of the State Association. The local agents of the companies that are represented in the association are forced to belong to these local boards and in joining they agree to maintain the association rates. Most of the agents' daily report sheets pass through the hands of the association's stamping-clerks who verify the correctness of the rate and see that the proper forms have been used. The association in this way is able to know whether or not the rates are being maintained. The same plan of local boards and stamping-clerks is followed by the Suburban Association.

The rates of the State Association are largely made by schedule although dwellings are for the most part on a tariff of minimum rates. The State Association does not concern itself with the subject of commissions.

The Buffalo Association of Fire Underwriters.

The Buffalo Association of Fire Underwriters is an incorporated body composed of local agents of Buffalo and Tonawanda; its purpose is to make and maintain rates and to improve local practices in underwriting; it has about seventy members; most of the companies doing business in its territory are represented in the association.

The agents' daily report sheets are reviewed by a stamping-clerk, for the purpose of correcting errors in rates and forms and detecting whether the rate has been observed. An agent who does not observe the tariff rate is disciplined. The rating is done largely by schedule. Brokers are certificated by the Buffalo Board and their rates of commissions are fixed. They are required to sign a pledge not to rebate and not to place risks with agents who are not members of the association or with brokers who do not hold certificates.

The four organizations here named are the only rating bodies that operate in New York state. The important questions in the subject of rating and combination concern all four alike and will be discussed in Part II of this report.

It will be observed that there are some companies which do not belong to the rating organizations. These are called non-Board companies. The same company however, may be a Board company in one part of the country and non-Board in another. In New York city only do the companies all belong to the Exchange.

It is not necessary to name in detail the organizations which make rates in the rest of the country, as they are in general similar to those already described. In certain states, however, notably the so-called "anti-compact" states where organizations of the companies for making or maintaining rates have been prohibited by law, the rating is done by a "rater" who has no connection with the companies; he makes so-called "advisory" rates and sells them to the companies.

The Eastern Union and Western Union.

It has been seen that the New York Exchange and the Suburban Exchange regulate commissions to agents. In general, however, commissions are regulated by associations of companies formed for this special purpose; the eastern part of the country, from Maine to Texas, is under the jurisdiction of the Eastern Union; a similar organization called the Western Union has jurisdiction over the Middle West. These associations will be referred to again in Part II of this report.

The Interior Organization of a Company.

The duties of the officers and directors of an insurance company are much the same as those of any other corporation. The territory over which a company operates is so large that it is customary either to have several Departments with salaried managers or else to put the business in certain fields into the hands of general agents who are paid a commission.

The person who comes into direct contact with the insured is the local agent. The local agent is paid a commission by the companies; usually a number of companies are represented by the same agent. Most companies employ in addition salaried men called special agents to look after their interests. A special class of persons called adjusters are employed by the companies to settle losses.

The Work of an Insurance Office.

When an application for a policy is received by an agent he should take steps to satisfy himself that the risk is a desirable one. He then writes the policy and sends a Daily Report sheet to the company advising them of the details of the risks that he has written. If the company thinks the risk is undesirable the agent is directed to cancel the policy. The companies are aided in keeping track of their risks by very carefully prepared detailed maps. Frequently a company is unwilling to assume the whole risk and part of it is "reinsured" in another company; for this purpose some of the companies have "treaties" with foreign companies which do no direct business. A policy can be cancelled on the initiative of either party.

In case of a small loss the adjustment is often made by the local agent or a special agent. If the loss is large a special adjuster is sent out. If several companies are involved on the same risk the adjustment is often made for all together through an adjustment bureau.

PART II.

AN ANALYSIS, BASED UPON EVIDENCE RECEIVED, OF THE PROBLEMS OF FIRE INSURANCE.

General Notions.

In the concluding part of this report will be found the recommendations which your Committee is prepared to present. The testimony taken, however, shows that the subject of fire insurance is so technical, the problems are so far-reaching, that it has been thought necessary to preface these recommendations by a careful analysis of the questions involved. The present Part is devoted to this analysis; while, for the sake of simplicity, an informal style of treatment has been adopted, it should be understood that the discussion is based very strictly upon the testimony which has been developed before your Committee.

As rating is the fundamental problem of fire insurance, other parts of the subject have been discussed, not in the order in which the testimony was developed, but so as best to suit the treatment of this particular question.

There are a few general ideas which it seems to the Committee should be once for all stated before going on to the consideration of the more immediately practical problems of the business.

Insurance is one of several methods for relieving misfortune. The simplest of these is that of voluntary contributions; but there are only a few steps from this to the most elaborate form of insurance. Even here the fundamental principle of insurance is present: the contribution of the many to help bear the misfortune of the few.

The transition from benevolence to the simplest form of insurance comes when those who are exposed to a possible misfortune agree beforehand that they will contribute if the misfortune should occur. The fact that, when the agreement is made, it is not known who the unfortunate one will be brings this plan down to a basis of self-interest. It is this form of insurance which is found in assessment (life insurance) societies, and among the town and county co-operative (fire insurance) societies.

A further step consists in collecting the premium in advance. This is a more significant step than is at first realized. The losses have not yet occurred, and may never occur. On what basis then

can the charges be made? Only on the basis of the law of general average, that is, that, in the long run and in the mass, even apparently fortuitous events do happen in an orderly and definite manner.

But this makes it necessary that the number of those who enter such an agreement shall be large, that there may be a broad enough basis for an average. Furthermore, it necessitates a very careful determination of what the premium should be, and this can be only on the basis of a similar past experience. This step then has introduced the necessity for "rating," that is for the determination of the so-called "hazard."

This is the form of insurance which is carried on in general by mutual companies. The mutual fire insurance companies protect themselves, however, against a possible insufficiency in the premiums by the right to assess.

The next step consists in doing away with a mutual agreement and the substitution of a third party who, in the capacity of middleman, collects the premiums and pays the losses. It is customary, furthermore, for this third party to guarantee the payment of the losses so that the policy holders are thereby relieved of all possibility of future assessments.

This final plan is the exact form of the so-called stock fire insurance. The third party that collects the premiums and guarantees to pay the losses is a corporation created for this purpose and known as a stock fire insurance company.

From this point of view the transaction may be viewed as a sale of a quasi-commodity, namely, indemnity in case of loss; the grocer sells flour, the insurance company sells indemnity. For certain purposes this is a valid point of view, but it must not be allowed to obscure the fact that the business, even in this form, is essentially mutual. The business could not endure for a day if there were not this mass of the insured, even though held together only by economic forces, yet as truly standing behind the company as though they were still united by a mutual agreement.

For immediately practical purposes and for legal purposes, the relation between insurer and insured may be thought of as simple and direct but in an inquiry such as the present, involving the public as a whole, and involving the future as well as the present, the important questions are economic rather than legal; or better,

sound laws can be founded only on a study of fundamental, economic conditions, and for insurance this can be attained only by constantly bearing in mind the essentially mutual character of the business.

Insurance men refer to this fact when they speak of insurance as a tax, meaning by this only that to pay the fire losses of a community it is necessary to collect all this money (and enough more to pay the expenses of the business) from the insured, and that the company acts only as collector and distributor.

It seems almost unnecessary from this to draw the additional corollary that the company in the long run can pay out only what it collects; yet this is commonly lost sight of. Even among intelligent people there is a feeling that when an insurance company pays a loss there is an end of it, and that, therefore, in some mysterious way, it escapes being an economic loss to the public.

The payment of premiums is forgotten in the payment of the loss. It is this failure to balance the many against the few, the public against the individual, the long view against the short view, that leads to so many popular fallacies; but in such an inquiry as the present it is the public and the long view which must be given precedence.

The contingency upon which the payment is made is a loss by the insured. There is no inherent reason, however, why this contingency should not be the misfortune of some one else; that is, A might take out a fire insurance policy upon the house of B. The effect of A's holding a policy upon his own house is to make him, to a certain extent, indifferent to threatened misfortune, but to hold a policy upon the house of B would make the burning of B's house something to be desired.

To allow this would obviously be such bad public policy that such contracts as these are now impossible to sustain although in the early days of insurance they were common. The insured must now show an "insurable interest" in the property. This provision limits insurance strictly to the furnishing of *indemnity*.

RATING.

The difficult problems of the fire insurance business all center in one way or another about the subject of rates. This is an important matter in any business, but in fire insurance there are dif-

ficulties and peculiarities that make it particularly important. In a manufacturing business the price of an article is largely determinded by the cost of production and this can, in general, be definitely ascertained. In a mercantile business the selling price is determined by the buying price. In the case of public utilities the fixing of rates is more difficult; more elements enter into the cost and more factors must be given consideration.

In fire insurance companies in which the assessments are made after the losses the rating problem has no particular difficulty; but in stock companies, where the premium is collected in advance, the anomalous condition arises that a price must be set to pay for something that has not happened and may not happen at all.

The price has therefore to be based upon the "expectation" of loss or the "hazard" as it is called. What should be the rates for a planing-mill and for a fire-proof office building? This is equivalent to saying, "what is the hazard of each," or in other scarcely more illuminating words, "What is the expectation of burning of each." No one would fail to be able to assert that this is greater for the planing-mill than for the office-building, yet the underwriters must go further than this and fix a numerical value upon these hazards.

Fortunately there is one guide in this matter, the past; otherwise the problem would be quite hopeless. If experience has shown that out of every thousand planing-mills there are the equivalent of twenty-five total losses and, if this planing-mill is deemed typical of the thousand, a rate of $2.50 per $100 of insurance should prevail (this is without loading for expense); if the mill is deemed to be below the average of the mills upon which the experience is based, "underwriting judgment" must be invoked, in lieu of more precise knowledge, to decide how much larger the rate must be.

This, very briefly, is a description of the process of making the rate in fire insurance, although in schedule rating, as we shall see, the process is far more detailed.

When one considers the almost infinite complexity of the hazards that are present in buildings — faulty construction of all sorts, excessive heights, large floor areas, openings between floors, dangerous processes, inflammable material, materials susceptible to damage — one can form some comprehension of the difficulties of rating.

Theoretically the rate measures the destruction that *would* occur in some thousands of just such buildings under just such conditions; practically, what the underwriter has to work on is what *has* happened to buildings that in certain respects resembled the one, and the problem of rating is the adaptation of this experience to the particular risk in hand.

To this already difficult problem must be added however two other features; first, new hazards are arising daily upon which no experience has been accumulated, which, nevertheless, must be considered in making the rate, and second, new processes and new forms of construction are being so rapidly developed that the experience upon a class becomes to a degree obsolete before time has elapsed in which to collect a large enough experience to give an average.

A further difficulty may here be referred to, the fact that in large cities there is a conflagration hazard of an entirely indeterminate size, that is, conflagrations come too infrequently to allow for the working of the law of averages.

As an example of the first point may be taken fire-proof hotels; there is not adequate experience in this class on which to base rates; another example is the hazard of acetylene gas; this illuminant came into use very rapidly and its hazard was almost unknown.

As an example of the second point may be taken electric power stations; the defects of the early installations have been so thoroughly overcome that the experience of ten years ago would be misleading.

Granted that the problem of rating is very difficult; the practical result is that it is impossible to make rates properly on the basis of a single company's experience. The experience even of the largest companies is not extensive enough to insure the proper working of the law of averages on all classes. It is very natural then, and from this point of view desirable, that the companies should, for this purpose, combine; for not only can they thus make rates more effectively but, since rates on the same classes are need by all, it would be a useless expense to have the work duplicated. So far therefore as the *making* of rates goes, it is desirable that the companies should combine; but in actual practice the combinations of the companies are not only to make rates but to maintain them,

and the desirability of this is another question which will be discussed later.

Open Competition.

We have now to consider the effect of open competition in fire insurance. It is not necessary to theorize about this for there is plenty of evidence in the rate wars which were formerly carried on and which to some degree still prevail. The universal effect of such periods of open competition wherever and whenever they have occurred has been a cutting of rates to a point that was below the actual cost of the indemnity. If the rate war had been general this would have meant the ultimate death of the company, and rate wars of even a local character lead, if long continued, to the dissolution of the smaller and weaker companies. The effect on all companies is weakening. The policy-holder, to be sure, gets his insurance very cheaply; too cheaply, for the weakening of the companies is not in the long run and on the whole an economic good, for there is just so much less protection behind the insured in case of a conflagration. The mutual character of insurance is so strong that nothing which tends to produce inferior protection can be for the public good. It has not done the policy-holder any good to get cheap insurance if, when the test comes, the protection is found to be worthless.

But this is not all. In a state of open competition the rates adjust themselves not to the hazards but largely to the strength of the insured so that the man of influence, whose patronage is desired, will get his insurance too cheaply, as against the small man who is not in a position to drive a sharp bargain. That is, competition results in discrimination.

Rate wars in fire insurance are very fierce; the motive is the same as in any rate war, namely, to secure business even at a loss in the hope that when normal rates again prevail the patronage so won will remain and the loss will be made good.

To summarize the case: the effect of a period of sustained open competition is the procuring by the public temporarily of cheaper insurance; this advantage mostly falls to persons of influence; the quality of the protection is lowered since the companies are weakened. Furthermore, if the process continues long

enough some of the smaller companies will be forced to retire and their business will be absorbed by the large companies.

Rate wars terminate when the companies realize that self-preservation requires them to obtain adequate rates and ordinarily this can be done only by some form of agreement.

The question occurs to one whether there cannot be open competition that does not go to an extreme, such competition as there is in, for instance, the grocery business or the shoe business. The distinction seems to be this: the grocer has very clearly in mind what his goods have cost him and what price he must get for them if he is to escape a loss, and he will not, except in an extremity, sell at a loss. The underwriter, on the other hand, is selling indemnity against something that may never occur, so, however low his price, there is always some possibility that he will escape without a loss; at any rate he can gamble on the chance. What corresponds to the point below which the grocer dare not go without a loss is the average loss experience on the class to which the risk belongs. But this is not easily ascertained; at any rate it does not stare the underwriter in the face in the same way that the buying price of sugar confronts the grocer.

Another reason why open competition goes further in fire insurance than in other lines is possibly due to the fact that the corporative form of organization encourages the officers to use methods which perhaps they would not use if the business were entirely their own.

Combination.

At any rate, however you may account for it, the actual historical fact is that at all times and in all places a state of open competition has been found impracticable and that combinations of the companies have been formed not merely to make but to maintain rates.

Now when a man comes to buy insurance and finds the companies combined on the matter of rates, he is likely to feel shocked, particularly in this day when all combinations of capital are looked at with suspicion. He finds that it is impossible to get insurance, at any rate of the grade that he desires, without paying a price that has been definitely agreed upon by the companies. He has no chance to bargain; the price is made and unless he goes to

the trouble of hunting up companies that are not in the combination, he must either take the insurance at that price or leave it. It is natural for him to conclude that this combination exists in restraint of trade and should be broken up.

Anti-Compact Laws.

And this is exactly what was done by a number of states at about the time that the formation of "trusts" began to appear as a menace to the country. So-called anti-compact laws were passed which made it illegal for the companies to combine either to make or to maintain rates. That is, these combinations were recognized to be trusts and it was a simple matter, apparently, to break the combination.

As a matter of fact, however, the economic forces involved were too strong to be restrained by law. Nothing could overcome the fact that a condition of open competition in which there were no standard rates was an impossible condition for doing business. The result, therefore, was that there came to be in every one of the anti-compact states a "State rater" who made and promulgated the rates in essentially the same way that they were made before by the rate-making bodies of the companies.

These "advisory" rates so made were sold to the companies and were observed or not as the companies saw fit. So clearly, however, was the importance of avoiding general demoralization recognized that in general the rates were observed by the leading companies. So the net result in the "anti-compact" states has been that the rates, instead of being made by the companies, were made by a "rater" and sold to the companies; the rates in general were observed as before but as there was no agreement to maintain rates it did become possible to a certain extent to bargain over the price.

The result has been that in general people paid established rates for their insurance but that, where a man had enough influence, he could, if he cared to, obtain concessions in rate. That is, at least one result of anti-compact laws has been an increased discrimination against the average policy-holder and in favor of the rich and influential.

As to the rates before and after the passage of the anti-compact laws the testimony seems to be that the rates have not been lowered by the passage of such laws. Figures from Missouri show that there the rate did not follow the burning-ratio so closely after the passage of the law as before. This is explained in the following way: before the passage of the law the rates were largely made by boards of local agents who were interested, for the sake of their customers, in keeping the rates low. The state raters, however, having no contact with the insured, did not feel this influence and the tendency was for the rates to increase.

The actual working of anti-compact laws has not been satisfactory; they have not decreased rates and they have greatly increased discrimination; they have taken the rate-making out of the hands of the companies, who were in direct contact with the business, and put it in the hands of persons who had no way of testing by experience the rates which they made, and who furthermore did not stand in such relation to policy-holders as to feel the force of public opinion.

It is well recognized that in general anti-compact laws have been a failure and there is noticeable a distinct reaction against them. This is observable in the agitation for their repeal, as in Missouri where a bill repealing the law was passed at the last session of the Legislature but vetoed by the Governor; this is also noticeable in the rising agitation for some kind of control of rates by the State, a control that would even perhaps go so far as to place the making of rates with the State. Three states, all of them so-called "anti-compact" states, Kansas, Texas and Louisiana have gone to various lengths in this matter as will presently be explained.

There is another adverse effect of anti-compact; to explain this it will be necessary to develop in some detail a refinement of modern fire insurance rating whose importance and influence can hardly yet be fully estimated; this is the subject of schedule rating.

Schedule Rating.

This method of rating proceeds upon the theory that the hazard of a risk may be analyzed into its component parts and that the rate for the risk as a whole may be built up from its various

elements. For example, let us suppose the proper rate for a certain type of building is known, we will say a five story, brick mercantile building, of 5,000 square feet of floor space on each floor, with closed elevator shafts and with certain other definite details of construction. Now it will be generally conceded, at any rate it can be demonstrated by experience, that additional stories, a greater floor space and open elevator shafts are all factors that tend to increase the fire hazard. The theory of schedule rating is that the quantitive effect of each of these factories in increasing the fire hazard can be separately given and that the resultant rate may be so built up. While there is a field here for a critical analysis of just how this combination shall be effected the reasonableness of the general proposition must be readily admitted.

The most common method for uniting these factors into one rate is by simple addition; this is the method that is generally used in New York city and wherever in this state rates are made by schedule, for instance: let us suppose that the rate of the five-story building first described to be 50 cents; let us suppose now that the hazard of three additional stories may be measured at 32 cents, that the hazard of each additional 1,000 feet of floor area may be measured at 3 cents, that the hazard of open elevator shafts may be measured at 6 cents, and furthermore, that the presence of fire extinguishers, which we will suppose are not in the building we have used as a type, serve to decrease the hazard to the extent of 5 cents. Then the rate for an eight-story brick building, of 7,000 feet ground-area, with open elevator shafts but equipped with fire extinguishers, in other respects, however, being like the type building already referred to, is obtained as follows:

	Cents.
Rate of type building	50
Increase of hazard by 3 extra stories	32
Increase of hazard by 2,000 feet extra ground-area	6
Increase of hazard by open elevator shafts	6
	94
Reduction of hazard because of fire extinguishers	5
Final rate of building	89

The actual practice of schedule rating by, for instance, the New York Fire Insurance Exchange differs from this only in degree. A base rate for a certain standard building is taken, the standard involving conditions regarding location and fire protection as well as construction and to this are added charges for deficiencies with regard to various elements of construction, equipment, occupancy and exposure, and from the result are taken whatever allowances are to be made for conditions that are more favorable than the standard upon which the base rate is predicated.

The schedule which applies this method most carefully is the so-called Universal Mercantile Schedule originated by a committee of the underwriters of which Mr. F. C. Moore was chairman; it is often known as the "Moore" schedule; this forms the basis for all the schedules in use in this state, and in fact in a large part of the United States.

The technical detail in a schedule lies first in the nature of the ground work, or plan, and, second, in the determination of the exact numerical charges to be made for the different elements of the hazard.

Another schedule of a somewhat different type is in use now in a large number of states in the Middle West and South. This was originated by Mr. A. F. Dean, and is known as the "Dean" or "Analytical" schedule. Its essential feature consists in the fact that the charges instead of being flat are a percentage of the base rate. This, to a degree, expresses the fact that there is a relationship among the hazards, for instance, that a stove is a greater hazard in a building of poor construction than in a building of good construction. The good points of this schedule are, however, quite as much of a practical as of a theoretical character, namely, as the charges are all percentages of the base rate, if the resulting rate should turn out in the light of experience to be too high or too low it could be accordingly lowered or raised simply by lowering or raising the base rate.

It will be readily realized that the exact nature of the details of either the plan or charges in a schedule is a highly technical matter which need come in no way under the surveillance of this Committee. It is sufficient for the purpose of the present inquiry that the companies are using methods for the determination of rates

which require a detailed analysis of the hazard and that each element of the so analyzed hazard has a definite contributory effect to the final rate.

The economic, even the sociological, effect of the application of schedule rating can scarcely be overstated. It is doubtless true that schedule rating is at present by far the most powerful agent in the inauguration of good building construction and in checking the appalling fire waste of the country.

The power of schedule rating as an economic force can be very simply explained; it lies in the fact that it is specific and open, that is to say the rate, instead of being made as a single lump sum, is in direct relation to the various features of the hazard. The importance of this lies in the fact that when the insured sees just how, by making certain changes in his building, he can obtain a more favorable rate, there is a direct appeal to his pocket which is at once taken advantage of. The change may consist simply of clearing rubbish out of the basement, or closing an opening, or it may be the inclosing of the elevator shafts or the equipment of the building with automatic sprinklers. In any case the insured has before him the exact details of how his rate is made up and can see just how much his rate can be reduced by making improvements. Usually the reduction in rate is so great as compared with the cost of improving the conditions that the changes are at once made. Even the expense, which is considerable, of installing automatic sprinklers is not in general greater than the saving on from two to five years' premiums.

Not only does the application of schedule rating operate to improve already existing risks, but it leads in a similar way to greatly improved construction in new buildings. Most new buildings of any importance that are being built nowadays are planned with full consideration of the reductions in rate which various features of construction will command. It is not too much to say that to schedule rating is due, as much as to any other one cause, the credit for improvements in modern construction.

After a schedule has been formed, which, it may easily be understood, is a matter of great difficulty and delicacy if it is to be generally useful, the application of the schedule is to a degree a mechanical process. In practice, when a risk is to be rated under a

schedule, an inspector is sent to the risk who makes a survey of it, noting in what respects and to what degree it falls short of the standard, noting also any features that are above the standard; he makes in fact a complete and impartial record of the risk in so far as its features have a bearing upon the fire hazard. It then becomes a matter of routine office work to apply the schedule to the elements of the risk as described in the survey.

When allowances are made for the slight differences in point of view between different inspectors, the rate for a given risk, when a schedule has once been established, is perfectly definite.

It is this fact that gives schedule rating one of its chief values, the fact that it eliminates discrimination — not completely, for in case the schedule is wrong one class will suffer at the expense of another — but at any rate the discrimination is all centered in the schedule itself. It certainly eliminates discrimination on the basis of "influence" which is the most vicious form of discrimination. And, even though the schedule is not perfect, it does what is most important, it adjusts the rates approximately correctly inside of given classes.

That is, a schedule may err in making wood-working establishments pay too high a rate as compared with metal-working establishments, but it is more important to have the rates for different wood workers properly adjusted among each other than the rate as between wood workers and iron workers. The reason for this is that the wood workers and iron workers are in direct competition each among his own group, but there is no particular competition of wood workers with iron workers.

Any reasonable schedule, even though it may have considerable defects, will tend to produce equity inside of fairly homogeneous classes.

The Influence of Schedule Rating upon Fire Prevention.

The operation of schedule rating in bettering fire prevention is one of those powerful unconscious agencies like the betterment of the race through natural selection. For the operation of natural selection there must be a correlation between the quality in question and the increased tendency of the individual to survive; for schedule rating to better conditions there must be not only a

definite relation between a better condition and the insurance rate, but this relation must be capable of being brought forcibly to the attention of the insured. In this process there is still another agency acting and another force. The agency is the broker or the local agent and the force is competition.

That broker or local agent can best secure business who can, other things being equal, perform the greatest service. Among the services that a broker or local agent does in this very way perform is the service of bringing to the attention of a client the reduction in rate that he can secure by making changes in his old building, or in planning his new building, so as to conform to the standards of the schedule. And if he should fail in assiduity in keeping his client thus informed, he would find that another broker or another agent had slipped in and performed this service and that his client's business had been transferred to the one who had thus demonstrated a greater capacity for looking after the interests of the insured.

The mechanism is thus complete: first, a rate which is made specifically to depend upon the various elements of the particular hazard, second, the power of the insured to ascertain all these facts as to his rate, third, the fact that the matter is brought vigorously and definitely to his attention by either broker or local agent, and it might be added, fourth, that, in case changes have been made the so-modified conditions will be given credit at once in the rate.

It is not to our credit that schedule rating is the most powerful agency for fire prevention, for it acts entirely through the selfish desire of the insured to lower his insurance rate, not primarily because he is interested in reducing the fire loss. But the insured will be only partly compensated by his insurance in case he suffers a loss. There will be an interruption of his business and a generally chaotic condition from which he is bound to suffer; he should have an interest in fire prevention on this account. To be driven to an interest in fire prevention only indirectly because of its effect upon his premiums is not praiseworthy when there are direct ways toward the same end, the enactment for instance of proper building laws, the creation of offices for inspecting risks and for a general surveillance over conditions looking toward fire prevention, not to speak of greater individual carefulness.

While, however, we are waiting for the time when we shall be farsighted and intelligent enough to attack this problem directly, we must recognize that we have, in the operation of schedule rating, an immensely important and effective instrument for this purpose; that largely unconsciously, or at least without direct intention, the insurance companies through their development of schedule rating are facilitating this work. In a consideration therefore of insurance legislation there must be kept in mind, among other things, the effect of any proposed law upon the operation of this process.

Anti-Compact Laws and Fire Prevention.

Anti-compact laws (and this brings us back to the point of departure) have a tendency to break down the force of this beneficial action. For, while in anti-compact states the rating is usually done by schedule, there is no longer such a clear-cut relation between the hazard and the rate; the "rates" are now "estimates" and while, as a matter of fact, they are generally adhered to, there is just enough dissociation of the rate-making and the rate-getting decidedly to weaken the good effects of the system of schedule rating upon fire prevention.

Open Competition and Fire Prevention.

The beneficial effects of schedule rating have been demonstrated by the rise in the burning ratio which follows a period of demoralization in rates. During a rate war schedule rating is of course abandoned. It then follows that untidy conditions or the absence of a watchman will not be penalized through the rate, and so rubbish is allowed to accumulate, the watchman is taken off, and there is a general lowering of tone which manifests itself in an increased burning ratio.

Anti-Compact Laws and State Regulation.

Three states which have had anti-compact laws, becoming dissatisfied with the results, particularly because of the discrimination which anti-compact laws had produced and fostered, have recently entered upon a system of State regulation of fire insurance rates.

In Kansas, under the anti-compact law, a very aggravated condition of rate demoralization existed, with accompanying discrimination. There was general dissatisfaction both on the part of the people, because of gross discrimination, and on the part of the companies, because they were making no money. A law was passed which required the companies to file schedules of rates which they could not depart from, and, at the same time, rebating was prohibited. Power was given to the Superintendent of Insurance to order changes in the rates if in his opinion they were not equitable. The constitutionality of the law is being tested in the courts. In operation the law has not been unsatisfactory. The Superintendent has made one general reduction of 10 per cent.

In Texas, the Legislature, in several special sessions, has been struggling with the problem of rates; the conditions there are very much involved, and very unsatisfactory. There has not been time to see whether the new State-rating law will improve the situation.

The Louisiana law provides a State board with power to review rates and to order changes if necessary.

None of these laws has been in effect long enough to show what the practical result of State regulation of rates will be.

It is interesting to observe, however, how entirely the principle of State regulation is opposed to the principle of anti-compact. Under anti-compact, a premeditated and enforced uniformity of rates was prohibited while under State regulation the effect, either by statute or in actual practice, is to secure absolute uniformity. The anti-compact laws in effect made it possible to "bargain" and the result was gross discrimination; under State regulation bargaining and discrimination are impossible.

Objections to State Regulation.

Some very grave objections can be made on theoretical grounds to the principle of State regulation of rates. In the first place if there is to be regulation at all the power must be delegated to some one outside the companies either to make, or in the last analysis, to order changes in rates. This is a very dangerous power; it is conceivable that it might be used for political purposes, at any rate he who exercised the power would have effective

pressure brought to bear upon him from only one direction, that is, to reduce the rates, while at least in certain emergencies the situation might demand an increase.

The only just basis for making rates is either the experience of those trained in the business or accessibility to a large collated loss experience or better, of course, both. But there are at present no statistics of loss outside of the offices of the companies; and, even if there were, the application of them properly is such a technical matter as to require the services of experts. To make or revise rates properly then the State would have to collect a loss experience, presumably by calling upon the companies for it, and it would have to employ experts at least as capable as those now employed by the companies.

The actual possibility of doing this is, of course, not questioned; the point is that the situation must be very aggravated that would warrant the State in assuming such an extended and technical piece of work.

Certainly the persons who, by training and by closeness to the problem, are best able to handle this matter are those in the business, and this function should be taken away from them only after making perfectly sure that it cannot otherwise be kept free from abuse, in fact further than that, only after making sure that it can be better administered by the State.

It has been suggested that this matter might be regulated by a board or court of review to which the companies might be cited by complainants to show cause why the rate should not be changed. It would not be absolutely necessary for this court to possess technical knowledge; many technical matters are decided by our courts of justice to-day, merely on the presentation of evidence. Such a plan might be feasible; the question is, however, whether it is necessary or desirable.

One very great practical difficulty in State rating remains to be explained. Insurance is based on general average; no one locality is sufficient for this, not even a state, not even the United States in the case of large conflagrations. If rate making were lodged with the State, and the experience of that state had been favorable, the tendency would be to make rates purely upon this experience.

The most serious effect of this would be that, in case of a large conflagration, it would be impossible for a company to recoup itself, for each state in standing upon its own experience would refuse to contribute to an outside loss; the result would be that the state in which the conflagration occurred would have to pay the entire loss. This would, of course, break down the very first principle of insurance, for one state is insufficient to stand the shock of a large conflagration. The San Francisco fire strained the resources of the whole country and if it had been borne entirely by California, that is, if the companies had been restricted to California in recouping themselves, the blow would have been crushing.

This is not an entirely imaginary situation. There happens to be an actual example at hand. Wisconsin is an anti-compact state to the extent of prohibiting combinations of companies but it permits the making of rates by local agents. This plan has in general given satisfaction to both companies and insured.

After the San Francisco fire there was a general increase in rates throughout most of the country. But in Wisconsin when the companies tried to make an advance it was resisted by the local agents (the local agents are, of course, much more influenced by popular feeling than the companies), and the result was that Wisconsin escaped paying its share toward putting the companies into a position to meet another such disaster.

It is evident that rating should not be placed in the hands of those whose interests are more restricted than the territory over which it is necessary to operate to secure an average. In the case of the conflagration hazard this territory must certainly take in at least the whole of the United States.

While State regulation stands always in the background as the theoretical solution of the problem of rating in fire insurance, as it does, indeed, for many other problems, it certainly should be invoked only as a last resort.

Complaints by the Insured.

When one begins to search for the state of affairs in fire insurance, which would warrant this extreme measure, he is surprised

to find that it does not seem to exist. This Committee when it began its work sent out over six hundred letters to all the commercial organizations in this state inviting complaints on the subject of fire insurance. It was furthermore requested that the letter be published in local papers, and, as a matter of fact, it was given a large additional circulation in trade-papers; it was sent out by the Bar Association of New York city to each of its members, and it was given special notice in the publications of the National Association of Credit Men, who had already interested themselves in the subject of fire insurance. There were not over a dozen complaints which were received in reply. Some other complaints were received during the progress of the investigation.

Altogether about thirty persons appeared before the Committee to make formal complaints and nobody who desired to make complaints before the Committee was refused permission.

Most of the complaints were either with regard to arbitrary increases in rates or from brokers who had been refused certificates by the Exchange. The individual cases, in which arbitrary increases of rates were complained of, were referred to the managers of the rating organizations concerned. In most of these cases the increase in rate was found to mark the transition from a period of loose rating to one of exact schedule rating, and the reasons given for the great advance were that the old rate was grossly inadequate. Most of the complaints in suburban territory were with regard to the increase in rates that had been made when the Suburban Exchange was founded. Evidence was brought forward by the companies to show that they had been losing money in the suburban territory before the formation of the Exchange and that the rates established were no higher than on other risks in other parts of the country.

In the absence of any exact figures, the Committee was not able to judge whether or not the final rates were just, but the rates on these risks were shown not to be discriminatory.

Over against these complaints there was considerable testimony, particularly on the part of large insurers that the rating in this state was being done in an acceptable manner, and a very great appreciation of the economic value of schedule rating. In fact, a pe-

tition was received by the Committee, signed by forty-five leading buyers of insurance, commending the principle of schedule rating and opposing unbridled competition.

The Earnings of Fire Insurance Companies.

In trying to discover the sources of the hostility on the part of the public towards fire insurance companies, it becomes of great importance to examine the question of earnings. It has been claimed by insurance companies that the earnings have been small, for instance, that the "underwriting profit" has been nothing during the last forty years. There was evidently so little real ingenuousness in this statement, not that it was wrong, but simply that it was unenlightening, that the public set it down as not worth consideration, and continued to believe that fire insurance was very profitable. In order to have some definite figures to present, the Committee requested Mr. J. H. Woodward, head of the Auditing Bureau of the New York Department of Insurance, to have an inquiry made on this subject. Before these figures are referred to, it will be necessary to explain in detail on what basis they were made.

What is left of the premiums received during the year, after losses and expenses have been paid, is what is commonly called "underwriting profit." If money earned no interest this would be the whole profit, but, in reality, interest is almost as important an element in the profit of an insurance company as it is in the case of a bank, in fact, the unearned premium reserve is on deposit with an insurance company in very much the same way that the money of depositors is on deposit in a bank.

Let us take an example:* suppose a company with a capital of $1,000,000, a surplus at the beginning of the year of $4,500,000 and doing a business during the year of $6,250,000 in premiums; suppose the unearned premium reserve at the beginning of the year is $5,800,000, suppose the losses during the year have been $3,450,000 and the expenses $2,400,000. Then the underwriting profit during the year has been $6,250,000 less $3,450,000 less $2,400,000, or $400,000, or expressed as a percentage, 6.4 per cent. upon the premium receipts, or 40 per cent. upon the capital.

* This is a fairly typical example.

Now the funds that the company has had at interest during the year are approximately the capital, $1,000,000, the surplus, $4,500,000 and the reserve,* $5,800,000, altogether $11,300,000. If this sum has earned 4 per cent. net the earnings from interest will be $452,000 or 45 per cent. upon the capital. The investment earnings of the company in this case are therefore somewhat greater than the so-called "underwriting" earnings and if in an unfavorable year the premium receipts were wholly used up in paying losses and expenses the company would still make a profit of 45 per cent. upon its capital stock from interest alone.

The principle stated in words is as follows: besides the capital stock the company holds a surplus and an unearned premium fund; even a low rate of interest upon this sum of money will yield a large return upon the capital.

The point that has been brought out here is that the so-called "underwriting profit" is only a part of the profit of an insurance company, and that the companies in professing to take the public into their confidence and not making this point clear may rightly be criticised.

In passing we cannot help noticing that the earnings were 85 per cent. of the capital stock; superficially, at least, this seems an excessive profit and would seem to justify the popular impression that fire insurance is a bonanza.

This illusion largely disappears when we consider carefully upon what basis the earnings should be figured. In reality, the amount of the capital of a fire insurance company has very little significance; it is scarcely anything beyond a basis for computing the ownership of the company. The real capital, in the economic sense, that the stockholders have in the business is to be valued either as what the business would bring if sold as a going concern, or as what it would bring if liquidated. The former, the market price, would in general be greater than the latter by the value of the good will of the business. The sum for which the business could be liquidated, which we may call the proprietorship or the "proprietary interest" would be, in general, the capital, the surplus, and

* It would be more proper to use the average surplus and reserve, but the effect in this connection would be simply to make a slight change in the effective interest rate.

say 30 per cent. of the reinsurance reserve (for the reason that the business could be reinsured for about 70 per cent. of the reserve; the reinsurance company would be to no expense in procuring the business, and, hence, could afford to take it at less than the full premium rate). In the example given above this would be $1,000,000 plus $4,500,000 plus $1,740,000, or $7,240,000. This is the sum of money which, at the lowest estimate, the stockholders have, invested in the business. If the profits of the year, $852,000, are figured on this amount as a basis, the rate of income is 11.7 per cent. instead of 85 per cent. as when figured on the capital stock.

Now this method of figuring profits is the method that is used in every other kind of business, and there is no reason why it should not be equally valuable in fire insurance. It certainly answers the question which the prospective buyer of fire insurance stock wishes to have answered, namely, "how much, taking into account all sources of income, underwriting profit, interest and gain from sale of securities, will my investment yield." It certainly answers the question which the public is interested in: "what, taking everything into account, has the fire insurance business yielded? Have the profits been excessive? if so the premiums must have been too high."

The actual method used was even somewhat simpler than this. Let us suppose a mercantile business, which on the basis of an inventory shows that the proprietors have $100,000, net, invested in the business at the beginning of the year; this may be called the proprietorship or proprietary interest; let us suppose that at the end of the year a similar statement shows that, without any further contribution by the proprietors, the business has increased to $105,000, and that the proprietors have in addition taken out $5,000 in profits. Then the earnings of the business have been the $5,000 of profits plus the difference between the values of the proprietary interest at the beginning and at the end of the year, that is, $10,000 altogether, and the earning rate of the business is the ratio of this to the $100,000 which was in the business at the beginning of the year, or 10 per cent.

In the case of the insurance company the proprietary interest

has already been defined as the capital, surplus and 30 per cent. of the reserve. The difference between the values of this at the beginning and end of the year, plus the dividends to stockholders less any possible assessments form the earnings for the year and the ratio of this to the proprietary interest at the beginning of the year gives the earning rate.

In our case we may suppose the figures to be as follows:

Capital (end of the year)	$1,000,000
Surplus (end of the year)	4,850,000
30 per cent. of reserve (end of the year)	1,860,000
Proprietary interest (end of year)	$7,710,000
Proprietary interest (beginning of year)	7,240,000
Gain in proprietary interest	$470,000
Dividends to stockholders	382,000
Earnings (as before)	$852,000

$$\text{Earning rate (as before)} \ldots\ldots \frac{\$852{,}000}{\$7{,}240{,}000} = 11.7\%$$

The result can be expressed in a slightly different way, thus: the money which the stockholders have, invested in the business, has yielded 11.7 per cent.; of this it has earned 4 per cent. directly as interest, since the entire amount has been invested in interest-bearing securities; the remainder 7.7 per cent. represents the profit which has come in consideration of the peculiarly hazardous nature of the business, that is, the stockholders have earned 7.7 per cent. upon their money by leaving it at risk in addition to what they could have earned if they had kept it invested in safe securities. The figures used are, of course, purely in the way of illustration and in themselves have no significance.

The figures that were prepared by the Insurance Department were made on this basis. The following groups of companies were selected:

I. The six largest United States companies.

II. The six medium United States companies (with assets about half-way between the assets of the largest and the smallest companies).

III. The six smallest United States companies.

IV. Six new United States companies between five and ten years old.

V. Six foreign companies.

The first four groups were practically self-determined; in the last group were taken four typical English companies and two Continental companies.

The investigation was made for each of the last twenty years or failing that for the lifetime of the company.

In the first group, that of the six largest United States companies, it was found that the average rate of earnings for twenty years had been 10.9 per cent., 12.8 per cent., 10 per cent., 9.3 per cent., 10.1 per cent and 7.6 per cent., or an average for all six companies of 10.1 per cent. The fluctuations from year to year had been violent, ranging from a profit for one company in 1908 of 31.4 per cent. to a loss for another company in 1906 of 49.4 per cent.

The rate of dividends returned, computed on the same basis, and for these same companies in the same order were 4.6 per cent., 4.1 per cent., 4.3 per cent., 7.3 per cent., 4.9 per cent. and 6 per cent. with an average for all six companies of 5.4 per cent.

That is, in words, for the last twenty years the six largest United States companies have earned on the average 10.1 per cent. per year on the amount of money that they have had, invested in the business; they have during that time on the average paid on the same basis dividends of 5.4 per cent., that is, of their earnings they have distributed in dividends a little more than half, keeping the remainder in the business where it has gone mostly to

increase the surplus and is thus of course at the hazard of a conflagration.

The detailed figures for these six companies are as follows:

Earning Rates of the Six Largest United States Companies.

Year.	Earning rate.	Dividend rate.
1890	9.7	6.8
1891	5.4	6.6
1892	8.5	6.4
1893	—1.3	6.3
1894	14.5	6.8
1895	12.3	6.4
1896	14.9	6.2
1897	17.5	6.0
1898	10.7	5.7
1899	4.8	5.4
1900	9.4	5.4
1901	10.1	5.3
1902	12.6	5.1
1903	12.6	4.3
1904	9.9	4.9
1905	17.6	5.2
1906	—14.0	—1.3
1907	2.5	5.3
1908	26.2	5.7
1909	18.4	5.2
Average	10.1	5.4

The same figures for the second group of the six medium companies give earning rates of 6 per cent., 8.9 per cent., 6.9 per cent., 4.8 per cent., 9.2 per cent. and 4.6 per cent., or an average for all six of 6.6 per cent. The dividend rates have been 3.2 per cent., 3.4 per cent., 3.7 per cent., 2.1 per cent., 3 per cent and 2.7 per cent., or an average for all six companies of 3.3 per cent., or to summarize: six medium-sized companies for the last twenty years

earned on the average 6.6 per cent. per year on the amount of money they had, invested in the business; just half of this was distributed in dividends and half was kept in the business.

The same figures for the third group of the six smallest United States companies give earning rates of 8 per cent., 6.2 per cent., 5.9 per cent., 4.8 per cent., 2.3 per cent. and 2.2 per cent., or an average for all six of 4.5 per cent. The corresponding dividend rates are 4.7 per cent., 4.4 per cent., 3 per cent., 5 per cent., .7 per cent. and 2.9 per cent., or an average for all six companies of 3.4 per cent. per year.

Of the six new companies, one shows an average profit for ten years of 28.5* per cent.; its dividend rate, however, was only 3.9 per cent., showing that most of this large profit was put into surplus. One year in the history of this company showed a profit of 62.1 per cent. For the six companies the figures are as follows:

Company 1, earnings 28.5 per cent., dividends 3.9 per cent.
Company 2, earnings —2.3 per cent., dividends —13.8 per cent.
Company 3, earnings 5.1 per cent., dividends .8 per cent.
Company 4, earnings —2.6 per cent., dividends —10.2 per cent.
Company 5, earnings 8.7 per cent., dividends 6.6 per cent.
Company 6, earnings — 1.6 per cent., dividends — 2.3 per cent.

That is, of six new companies chosen at random, all of them between five and ten years of age, three have lost money.

The figures for the United States branches of companies of other countries are as follows:†

Company 1, earnings 9.3 per cent., dividends 6.2 per cent.
Company 2, earnings — 4.7 per cent., dividends — 6.8 per cent.
Company 3, earnings 6.7 per cent., dividends 2.1 per cent.
Company 4, earnings 5.1 per cent., dividends 1.7 per cent.
Company 5, earnings — 1.1 per cent., dividends — 7.1 per cent.
Company 6, earnings — 14.8 per cent., dividends — 19.4 per cent.

That is, of six companies of other countries three have lost money in this country.

These figures seem to demonstrate several things very clearly,

* This company and its methods are exceptional.

† Dividends to stockholders were taken as balance between remittances to and from home office,

first, that what money is being made in the business is being made by the old, large, established companies, that new companies are quite as likely to lose as to make money, and that in a general way the prosperity of a company is in pretty close correspondence with its size and standing.

Second. It seems clear that the companies on the whole, have not made an excessive profit. The best companies have averaged 10 per cent. profit for the last twenty years of which half has been kept in the business. In a mercantile or manufacturing business this would be considered a good return, but it must be remembered that in a fire insurance company everything may be lost in a conflagration. And yet these figures are only for the largest companies; the small and medium-sized companies have earned scarcely more than they could have earned if they had invested their money in bonds or mortgages and done no insurance business at all.

This showing is substantiated, first, by the fact that no company of the first rank has gained a footing in the business during the last thirty years, and, second, by the record of companies which in that time have been organized and dissolved. The records show, according to testimony, that out of 213 companies admitted to do business in this state in 1875 there are only 69 of the original number remaining, the other 144 having withdrawn and in nearly every case gone out of business.

In this connection the fact was brought forward that in general the directors of a fire insurance company own only a small part of its stock; the average for the six largest companies is 7 per cent., and for all the companies 20 per cent. It is furthermore a fact that fire insurance companies are not being organized in general by men who are most familiar with financial conditions; it is stated to be impossible to secure money in Wall street for the organization of fire insurance companies and that the money in fire insurance belongs very largely to small investors.

The figures that have been presented seem to show that on the whole the companies have not been making an excessive profit; the question whether the premiums have been too large reduces itself, therefore, to the question whether the expense has been too large. The subject of expense will be considered later.

Discrimination Among Classes.

However, it would not necessarily follow, even if the premiums on the whole were right that they were right in detail; that is, it may still be that one class is rated too high and consequently another too low, that the rates in one part of the country are unwarrantably high while the rates in another part of the country are too low, that the rates now are perhaps too high against a time a few years ago when they were perhaps too low.

This in reality is true. To be equitable the rates should measure the hazard; as an actual fact they depend, not merely upon the hazard, but upon competitive conditions. For instance, the rates in general are too high on protected dwellings and small dwelling-stores. This is demonstrated by the fact that these classes of risks and perhaps a few others are referred to by underwriters as "preferred risks" and what is still more to the point, by the fact that the competition for this particular business is very keen. This shows itself by the payment of excessive commissions and by the fact that most companies will not accept from agents the less desirable risks unless they produce also a large amount of the preferred business.

There are, doubtless, classes which are rated correspondingly low. There are some risks that many companies will not write at the schedule rate. In general the class of contents of mercantile buildings is often an unprofitable class at current rates, at any rate it is less profitable than the buildings themselves.

Now, why should there be these differences? What is the force that prevents the rates from corresponding to the hazard? The answer will be more evident in the light of this further observation, that in general the rates are too high on low-rated risks and too low on high-rated risks, that is in general, that hazardous classes are paying less than they ought to at the expense of non-hazardous classes which are paying more than they ought to. And the reason for this is a very natural one, that it is easy to collect a small premium and hard to collect a large one.

The hazard of protected dwelling houses, for instance, is so small that it is an easy matter to collect more than is sufficient; the policyholders are contented in their ignorance; in general the property they own is small and there is no pressure, and particu-

larly no united pressure, brought upon the companies to reduce their rates. On the other hand one who pays a larger premium on a hazardous risk is keen to get every concession and particularly as such risks are likely to cover very large values. The consequence is that the companies in general find it impossible to hold the rate up stiffly on such classes.

The fact that rates are controlled by competition, and not entirely by the hazard, is shown also by the experience of the companies on sprinklered risks. The Mill Mutuals, as is well known, were the pioneers in what has resulted in a revolution in the construction and equipment, from a fire-preventive point of view, of factories. The plan of standardization and inspection which was adopted by the Mill Mutuals, and which is referred to in more detail elsewhere in this report, was so successful that the stock companies, in order to retain even a share of this business, were forced to adopt the very same plan. To this end associations were formed, one with headquarters in Hartford, and one with headquarters in Chicago, known as Factory Insurance Associations. Some twenty of the principal companies are members of these organizations.

The technical work of these associations consists in examination of plants, the preparation of plans for sprinkler equipments and other fire-preventive devices and inspections to see that these are properly installed and maintained.

The significant point about these associations, in the present connection, is, however, the fact that a risk is not turned over to them by the companies except under pressure of competition from the Factory Mutuals.*

A risk which was insured in stock companies and not threatened by the Mutuals would not be able to obtain an inspection by the Factory Insurance Association. But when there is danger of its being taken by the Mutuals the Association is put upon the risk and the rate may drop in some cases very materially from what it had previously been, even under the same conditions.

The facts then are that while as a general thing rates are fairly

* This is not strictly true, as within a few months these associations have adopted the more liberal policy of forestalling competition, but the condition has been as described up to very recently.

well graded according to the hazard, and while the tendency of schedule rating is strongly in this direction, the rates on certain classes, in particular the so-called "preferred risks" and the "sprinklered risks" are governed by competitive conditions rather than by the hazard alone, and that in general the rates on these classes are likely to be unwarrantably high unless they have been reduced by the competition of non-stock companies.

The situation is a perfectly natural result of competitive conditions. The grocer in the same way sells sugar and flour very close to cost and makes most of his profit on coffee and tea and spices.

But it is right here that we begin to get some clear light on this matter of combination. As long as the companies act in open competition they should evidently be governed by the laws of competition and, let him who bargains beware — he may pay too much for his insurance, he may pay too little, but he cannot seriously complain, for he knows the conditions of the game — but the minute that the companies begin to combine the laws of competition are superseded by the laws of equity; the price is no longer the price that can be wrung out of the public in an open barter, but it is a price based strictly on the hazard.

This principle will be readily admitted by underwriters. They very commonly speak of insurance as a tax, meaning by this that the companies are merely acting as agents to collect from the many who are exposed to a hazard a contribution to be applied to the few who suffer the loss. But that a tax should be *equitable* is at the very basis of the idea of a tax. Conclusive evidence that the underwriters readily admit that with combination should be associated equity of rate is evidenced by their willingness to discuss his rate with the insured and to go to some length in attempting to justify it. In fact it is unquestionable that the whole tendency of combination has been toward equity in rates. Schedule rating is, of course, the greatest factor in this, making discrimination impossible and insuring essential equity between classes.

Our conclusion then is that combination and equity in rates should be inseparable; not only has experience shown that equitable rates are impossible in the absence of combination, but conversely, if there is to be combination then out of it must (by the help of law if competition is not sufficient) come equitable rates; that is, *if*

companies are to be allowed to combine then it must be only on the assurance that the rates will be equitable.

The State is certainly justified in taking any steps necessary to see that this condition is maintained. The question that now arises is whether it is necessary and desirable for the State to undertake to regulate rates or whether the force of competition, properly guarded by publicity, can be trusted to accomplish this result.

The question of competition in fire insurance has not been understood. It has been generally assumed that a combination of fire insurance companies was exactly like a trust, that there was no internal competition among the members of the combination. This is certainly not so. In reality the companies that form a tariff organization are in the most intense competition with each other, and what the combination chiefly does is to prevent this competition from producing havoc with the rates. The existence of competition is unquestionable; in fact, it makes the continued existence of a combination always a matter of uncertainty. Tariff organizations are not in general longlived. There is almost always a certain amount of underhand cutting of rates, and when this condition becomes unendurable the organization is abandoned, a rate war ensues and a new organization is formed only after the companies find that for their very existence they must get together again.

The tendency of the companies inside of tariff organizations is asserted to be in general toward the lowering of rates, pressure being brought upon a particular company or companies by the insured and through them upon the organization.

Testimony has been given by several witnesses, and the same statement is often seen in print to the effect that the companies do not desire to see excessive rates because of the competition of new companies that will be attracted into the business.

The nature of competition in fire insurance is certainly very different from that in most other enterprises. To compete with a railroad it is necessary to build a new line, and when it is there it is there once for all and must be maintained unless the investment is to be a total loss. But the investment in a fire insurance company consists entirely of securities; there is no plant to speak of, even the agency system consists for the most part of agents who

are already in the field for other companies. It is, therefore, a business that capital can be very readily thrown into and from which it can be just as readily extracted — usually by reinsuring.

It is a business, furthermore, in which competition is very intense — for this reason: outside of the large cities the business of the country could be done by a dozen companies, but in the large cities there is a dearth of insurance — this is because of the conflagration hazard — 150 companies are bidding for the business that could be done by a dozen; the competition is, therefore, very keen, since it is necessary that each should have a slice to balance the business which is exposed to a conflagration.

It is asserted that the conservative companies much prefer the stable conditions that prevail under normal rates to the unstable conditions that result when the rates are excessive.

Beside the competition of companies that are inside the organization, board companies, so-called, there is in general a competition from the non-board companies. These companies, not being members of the organization, are not bound to observe any particular schedule of rates. As a matter of fact they inform themselves with regard to the board rates and to a degree observe them, cutting the rate where it becomes necessary to secure desirable business. The competition of the non-board companies of course tends to keep the board rates down. In most parts of the country there are many non-board companies. In New York city, however, the companies that are authorized by the state are all members of the Exchange.

Beside the competition of the board companies with each other and with non-board companies there is a considerable competition from the Mill Mutuals, the Lloyds and the Town and County Co-operatives.

The inequities with regard to classes have been spoken of and will be reverted to later. Inequities in rate with regard to place certainly exist. However, so far as New York state is concerned, they do not seem to be serious. As to the state as a whole the average rate is the lowest of any (with the exception of Delaware) of the United States. Such inequities in rate are certainly much fewer than they used to be.

The fact has been referred to that "preferred risks" and some others are confessedly rated too high, irrespective of the fact that there may be other inequities which are masked by lack of definite knowledge. It is worth while to ask whether this inequity is a serious one. First, as to the owner of the "preferred risk:" he is paying only a small premium at most and does not complain; nevertheless the fact remains that he is paying more than his share of the fire loss. Second, as to the agent and the company that receives the premium: this is a more serious matter in its consequences, and will be discussed later under the general subject of agents. Third, as to the risks that are paying too little at the expense of others: the most serious effect here is that since the rate is not made proportional to the hazard there is insufficient incentive to the insured to improve his risk. Any underrating of hazardous risks is an economic mistake. It is a mistake to assess a conflagration charge over the country as a whole; it ought to fall on the cities and districts where it belongs, otherwise, the country is paying for the hazard of the city, the city grows at the expense of the country. The congestion problem is serious enough; it ought not to be fostered by a maladjustment of insurance rates.

It may be said with regard to maladjustments of rates that it is a matter that will take care of itself if given publicity. The rates on dwellings have in general been coming down for years, and the companies will reduce them still more if the public demands it. They will not readily do this, however, until they are pressed to it. If, on the whole, the premiums are not excessive, it, however, would mean an increase of rates in certain other classes.

Classification.

This leads up to the general subject of scientific rating. In spite of modern developments in schedule rating the fire insurance business to-day is still done in a very unscientific way. To a certain extent it must always be somewhat unsatisfactory as compared, for instance, with the exact methods of life insurance. The reasons have already been referred to, the very great complexity of the problem, the changing conditions, the presence of an indeterminate conflagration hazard. This, however, is not a sufficient excuse for abandoning the whole problem and doing nothing, dis-

missing the whole subject with the observation that fire insurance is nothing but guesswork and never will be anything else; and this is the attitude of many underwriters.

It is simply a very complicated and difficult problem in classification; if anything is to be done with it this must be recognized and it must be dealt with accordingly.

All problems in classification are difficult and different from all others; this one undoubtedly is particularly difficult.

Practically the only light that is thrown upon the hazards in fire insurance is that of experience; and furthermore, the experience to be worth anything must include not one but many similar cases. The gathering together of this experience can to a degree be done by the mind unaided; so gathered and assimilated it becomes known as "underwriting judgment." In addition to all that can be done by the help of exact classification there will always be opportunity for all that the cleverest underwriter has of underwriting judgment.

Two objections that are frequently made to classification in fire insurance are, first, that, if the classes are made large enough to afford a proper average the class will be so comprehensive, will embrace such a large range, that it will lose its practical value; second, that if it is made definite enough to be of practical value the number of examples of the class will be too small to yield an average. But these objections are not peculiar to fire insurance; they are the two extremes between which any problem in classification must be kept; and while they are important they are commonplace; they are taken for granted.

There are two principal uses for classification — and in this it is assumed that schedule rating is contemplated. The first use is to furnish detailed knowledge with regard to the elements of the hazard upon which to base the charges of the schedule. This is confessedly a very difficult matter, and it is freely admitted that only the main points could be ascertained in this manner; most of the detail would have to be put in with the help of underwriting judgment.

The second use for classification is as a test of the correctness of a schedule when made. The very fact that the details of a schedule must be largely a matter of underwriting judgment makes it of

the greatest importance to be able to subject the schedule when made to a test to see how nearly right this judgment has been.

The obvious first test to apply is to see whether it has produced the proper amount of premiums, to be gauged, of course, by the fire loss, on the business as a whole. But this is only a crude test; the schedule may be producing too much revenue on one class and too little on another. It becomes desirable, therefore, to test it on different classes, and in a great variety of ways. If the schedule should stand all these different tests it would be pretty conclusive evidence that it contained no serious defects.

The practicability of classification in fire insurance has been increased tenfold by the modern sorting machine, such as is used in the tabulation of the United States census; in fact, it is not too much to say that this machine is capable of revolutionizing any business in which a detailed mass of statistical knowledge is important. Problems which before would have called for hundreds of clerks and volumes of weary tabulation can be run off on a machine with an incredible degree of efficiency. The information with regard to the individual is punched on a card and these cards so punched can be sorted to make any desired exhibit. It is absolutely within the bounds of practicability that all pertinent information with regard to each risk in fire insurance should be punched upon a card and when so done and filed it becomes only a mechanical process to separate any information that is desired: for instance, the amount at risk and the premium receipts in any given portion of the city; the amount of premium receipts, the amount at risk and the losses in any given class or on buildings of any given type of construction.

The scientific determination of rates has been highly developed in life insurance. Up to the present, however, the problem has been very simple for insurance was carried on in practically only one class, that of standard lives, that is, persons who could pass the medical examination. Now, however, as that field has been pretty fully covered, the companies are pushing into the field of impaired lives, substandard lives so called. When this is done their problem will be essentially the same as the problem in fire insurance, that is, a company will make a special rate for instance for the following risk, taking all the facts as given into account:

Age: — 35. Occupation: — Printer.

Family history: — Mother died of consumption, father died of Bright's disease.

Personal health: — Over-weight, recently recovered from pneumonia.

It will be readily seen that these are the elements of the hazard just as details of construction, occupancy and exposure form the elements of the hazard in fire insurance; and in fact one of the companies at least is already issuing rates for substandard lives that are based on a schedule whose principle is similar to that used in fire insurance.

The difference, however, is this: the companies, as a basis for what they plan to do, that they may act intelligently in making rates, have united, through the medium of the Actuarial Society of America, to combine their experience. The work is thoroughly planned and well under way; the cards are being punched in the separate offices; they will be united and classified by the sorting machine into a great variety of groups. The result will be a very complete statistical study of the influence of occupation, locality, family history, and personal impairment upon length of life; it will be founded upon the experience of a large number of companies on hundreds of thousands of lives.

This is very different from anything that has been done with the the corresponding problem in fire insurance. Strange as it may seem, rating organizations in the fire insurance business do not themselves possess any classified experience. The companies to be sure keep their classifications, but these figures are not combined and the rating is done by a committee which makes the rates upon the basis of a comparison of the members' own underwriting experience. Attempts have frequently been made by underwriters to induce the companies to combine their exprience as a basis for use in making rates, but these attempts have invariably failed.

The reason for this is that a company considers its experience a trade secret and is so jealous of it that it will not submit to its being used for the public good. There is in Chicago an organization of about twenty companies which have combined their experience but it has not been done for the purpose of making more equitable rates but for the benefit of the companies themselves which will

thus be advised what business they can with profit accept and what they had better reject.

The situation here is perfectly clear. A trade secret in fire insurance can be nothing more than the fact that a company has found certain classes profitable and certain classes unprofitable at existing rates and this means nothing more than the fact that the rates on certain classes are too high and on others too low. Now any information that is capable of being used to show a company how it can make money in view of existing inequities in rates is equally capable of being used to make the rate equitable to start with.

This is exactly the point where we find the companies falling short in that balance which must subsist between combination on the one hand and equity on the other. The companies recognize the *principle* that in return for the right to combine they must make equitable rates and it can be said that in general the tendency is quite in line with this but in actual practice they fall short. But what is there for it save that they should go the whole length and throw these so-called trade secrets into the mixing pot that out of them may come truly equitable rates.

A few perfectly candid underwriters answer that this would take all the fun out of the business and leave it a game that anyone could play. The answer is that very likely this is so; it may perhaps not be as interesting to live now as it was in the Middle Ages. The fact is, however, that this is not the Middle Ages, that the world is moving in a certain direction and the wisest thing one can do is to find out what that direction is — and act accordingly.

It is perfectly certain that the public has a right to demand and is going to demand that in return for the right to combine the companies shall furnish equitable rates and not only that but that they shall put themselves into the position to *demonstrate* that they are furnishing equitable rates so far as that is humanly possible.

The old type of underwriter is passing. He did not believe in preventing fires; fires were what made business for the underwriters; it was the function of insurance simply to distribute the fire loss and if the people preferred to burn their property it was not his business to interfere; it was his business to see that plenty

of premiums were collected to pay the losses,— it was not important who paid them so long as they came in; incidentally, however, he had a shrewd eye for the business in which there was a good profit and let his less keen brother take the rest.

That type has nearly gone. The new underwriter has his face turned in quite another direction. His motto is: "Equitable rates and fire prevention and a steady profit, all through combination."

Combined Loss Experience.

Since the underwriters have failed to take the initiative in the collecting of a combined loss experience and since it is necessary, if rates are to be equitable and demonstrably equitable, that such figures should be available it seems inevitable that the State should undertake this work. It would fall in very naturally with its other work along the lines of publicity.

Each company should report to the Superintendent its classified experience for the year and for the whole of the country. Such a plan, however, has so many dangers and so many difficulties that it should be adopted only after most careful consideration. At present each company has its own separate method of classification; most of these are very bad. If the companies were to report to the State it would, however, necessitate the adoption by all of a uniform system. It would be necessary to plan such a system with the most extreme care. Another danger lies in the possibility that different states might demand the experience of the companies classified in different ways; this would plunge the companies into maddening confusion.

While, therefore, it is certainly desirable that loss experience should be gathered and made a matter of public record no state should enter upon this without the most careful consideration. It is properly a matter which should be handled by a committee of the National Convention of Insurance Commissioners in conference with the companies in the same way that the subject of uniform blanks is handled.

Insurance and fire prevention.

There is nothing more interesting in the fire insurance business to-day, no, in the *insurance* business, for it is coming or has come

all along the line, than the way in which the *insurance* of losses is broadening its grasp to take in the *prevention* of loss.

This is not an easy matter to understand but it is of profound economic significance. For if an agency which primarily is designed to prevent the *ill-effects* of loss can be enlisted in the work of preventing the loss itself, we have an amazing potentiality for good, all the more so that this connection has been developed along purely economic lines.

The matter is on the face of it hard to understand for apparently by preventing fires underwriters are cutting out the very source of their revenue; and yet it is possible to go a long way toward explaining this connection between insurance and prevention on purely economic grounds.

In the first place the establishment of schedule rating, the analysis of the hazard, the penalizing of definite elements of hazard, puts in the hands of the public an instrument which it can use with tremendous effect, even without encouragement from the companies, to improve conditions in the way that has already been referred to. The companies, however, have co-operated in this work, not perfectly to be sure, and yet on the whole very acceptably.

So much schedule rating does and in a more or less mechanical way. But beside this the companies are carrying on an active crusade to reduce fire loss. The work of the National Board of Fire Underwriters has already been referred to and while this is the principal single agency which is engaged in this work it is helped along to a degree by local boards and other organizations.

While it is undoubtedly true that an underwriter who has once become interested in fire prevention developes an interest in it as a citizen that goes beyond his interest as an underwriter it is possible to account for his interest on business grounds.

The Conflagration Hazard.

In the first place the conflagration hazard is an unspeakable menace to the underwriter as well as to the public. So far as ordinary losses go there is no particular difficulty; they are sufficient among themselves to give a remarkably stable average. In this field a large, well-established fire insurance company is nearly

as stable as a life insurance company. But the conflagration hazard is totally different. Great conflagrations fortunately do not come often but this very fact makes it impossible to obtain a workable average and, as insurance is based upon general average, conflagrations are strictly speaking outside the proper field of insurance. But as a practical matter they must be included, partly because of the difficulty of defining a conflagration and partly because public necessity demands some agency that shall do this work even though imperfectly.

During the last forty years there have been four large conflagrations in which the insurance liability must have been in the neighborhood of $400,000,000. Assuming that these belong properly to a period of fifty years and that the cost of them should reasonably be assessed to the twenty largest cities of the country it can be shown that on this basis something like 30 or 40 per cent. of all the premiums collected in those cities were necessary for conflagration losses alone; that is, that on this basis the cost to New York each year of its conflagration hazard, outside of what it may pay for the maintenance of the fire department, is in the neighborhood of ten million dollars a year. But while this affords some notion of the size of the conflagration hazard it is of very little practical assistance to an insurance company, simply because the law of averages does not work; a fire may start in New York to-day which will make such calculations ridiculous and bankrupt most of the companies of the world.

It is no wonder that in the face of this ever-present and yet entirely unknowable menace that the companies do not enter with interest into the refinements of rating. This explains, however, why the companies are interested in preventing fires in large cities. They recognize that the conflagration hazard must be stamped out; it cannot be tolerated, there is no economic machinery which can cope with it; it must be stamped out just as tuberculosis must be stamped out.

But there is still another reason why the underwriter is interested in the reduction of fire loss. His premiums are paid sometimes several years in advance against losses that have not yet occurred. If the underwriter can keep the loss ratio continually falling there will always be a larger margin of profit in the business, even though from time to time premiums are adjusted to the

lessened hazards. But if the loss ratio is rising, before the premiums have time to catch up, the losses will have been made. Years ago when the margins were large this was not clearly felt but to-day it unquestionably is strongly operative and indeed is sufficient in itself to explain the interest of the underwriter in fire-prevention.

There is a strong analogy, which should not be passed by, between the underwriter and the physician. Both are primarily in the business of curing ills, but both are coming more and more to be concerned with preventing ills. That in either case there can be this hearty union of the two functions is a cause for public congratulation; publicity and education in the field of medicine and underwriting will lead to the gradual elimination of both disease and fire.

In answer then to the underwriter who says that equitable rates make the business uninteresting, it can be said that the business is changing: the interest in the business to-day is coming to lie in fire prevention and the most progressive underwriters are those who most clearly see these tendencies.

SUMMARY.

As this subject of rating has turned out to be so comprehensive, it is desirable to make a summary of the whole matter. First, it is recognized that a rate equitably should depend upon the hazard; that the hazard, however, is known in general only by experience; that for this no one company has a broad enough experience of its own and that, therefore, the making of equitable rates demands co-operation; furthermore, since the same rates are needed by all the companies, economy would suggest that the work should not be duplicated.

Second. It has been demonstrated by the experience of all times and all places that open competition in fire insurance is an unstable condition which leads to the general weakening of the companies, and eventually to the elimination of small companies, further that under open competition there is always discrimination in favor of the policy-holder with influence.

The only alternative to open competition is, however, combination not merely to make but to maintain rates. This in general or certainly to a degree makes it impossible for the public to

obtain insurance except at the prices fixed by the combination. This inability to bargain is resented by the public and the rate-making organizations have been referred to as trusts and combinations in restraint of trade, and in many states so-called anti-compact laws have been passed forbidding the companies to combine either to make or maintain rates.

Third. The effect of the anti-compact laws has been not to bring back a state of open competition, for this, as has been said, is an impossible condition, but to introduce a weakened substitute for combination, the selling of "advisory" rates by an independent rater. These rates in general are observed but as the companies are under no agreement to maintain them, the way is open to gross discrimination. The tendency of independent rating is in general toward higher rates and toward a weakening of the beneficial economic effects of schedule rating. The discrimination in anti-compact states has become so offensive that there is a strong movement toward State regulation.

Fourth. State regulation is recognized as a far more logical condition than one in which anti-compact laws prevail, and in the main the objection to it are practical rather than theoretical. The principal question to decide is whether the conditions warrant so radical a step and whether it is likely that conditions would thereby be materially improved.

The most serious theoretical objection to State rating is that it would be likely to make it impossible for a company to recoup itself after a conflagration. The practical objections lie in the possibilities of its being used for political effect and the fact that the State does not possess and could not obtain, except with great pains and expense, the expert knowledge upon which to make rates properly.

Fifth. It does not appear that there has been an excessive profit in the business; this would seem to indicate that the premiums have on the whole not been too large. Discrimination between classes is, however, found to exist, particularly in the too high rating of "preferred risks." These are conditions, however, which will be cured by publicity and the general tendency toward equitable rating is unmistakable.

Sixth. Not only is combination necessary for equitable rating,

but conversely the making of equitable rates is the consideration which should be demanded of the companies for the right to combine.

Seventh. It is believed that competition and publicity are sufficient to insure this, particularly as the manifest tendency of schedule rating is in this direction.

Eighth. It is shown that there is intense competition among the members of rate-making organizations and that this condition differentiates such organizations from so-called trusts, that excessive rates are not desired as tending to lead to a dissolution of the combination and also to the organization of new competing companies and that a strong competition exists in most parts of the country from non-board and mutual companies.

Ninth. As the companies have failed to co-operate in collecting a common loss experience which would serve as a basis for equitable rating, it is believed that steps should be taken toward the acquirement by the State of such statistics.

It is the belief of this Committee that, in the present condition of the business, competition can be relied upon to keep the rates equitable, particularly if re-inforced by publicity. This Committee fails to find any condition which would warrant the extreme step of turning the rate making over to the State and it does not recommend State regulation of rates beyond certain steps looking toward closer supervision of rate-making bodies and the securing of proper publicity. The Committee believes that State interference with rates has not been beneficial and has been brought about upon the wholly theoretical grounds that combinations in fire insurance were a menace to the people which an actual investigation of the facts fails to disclose. This Committee believes that a purely academic view of what combinations in fire insurance might do should not be allowed to usurp the place of what actual facts under a reasonable interpretation seem to show.

Insurance Companies and Legislation.

The interest of insurance companies in defeating adverse legislation is due as much to the inconvenience of adjusting themselves to changed and awkward conditions as to any real inherent concern in the matter. The public must have insurance and the

public must pay for it. If adverse legislation makes it harder and, therefore, more expensive to do the business the burden falls upon the people, not upon the companies. The difference mainly is that the companies can do their business more agreeably and more rationally when the laws are reasonable. There should certainly not be ill-considered legislation in a business which is so clearly mutual in its nature, where so obviously and so inevitably the entire cost falls upon the public.

Taxation.

The taxation of insurance companies is a good example of this. Insurance companies are taxed a percentage upon their gross premium receipts. This is on the theory that the companies should pay for the cost of supervision; in reality, however, the taxes collected from insurance companies far exceed the cost of maintaining the Department of Insurance. No reason has been discovered in this inquiry why the burden of government should fall more heavily on this business than on other forms of corporate activity beyond the fact of the ease of collection of the tax.

Apparently the tax comes out of the profits of the business; in reality it comes out of the pockets of the policy-holders. There is no way of preventing this; it is inevitable. There is even a regular charge in the Mercantile schedule for "taxation and adverse legislation."

The question then is whether a tax that falls upon the individual in exact proportion to his fire hazard is justifiable. It is indeed, for this should be exactly the incidence of the tax for the maintenance of the fire department, for in the long run the fire department will be called upon just in proportion to the hazard.

The real injustice of the tax lies in the fact that the insurance companies are made to collect it; the result thus is to disguise the moral effect of the fact that a man who has a fire haard is penalized for it and to subject the company to abuse for the size of its premiums. Besides that, if the tax is collected through the companies the man who does not insure escapes paying his share; to this may be said in answer, however, that every plan of taxation falls more heavily upon the provident than upon the improvident.

The further observation might be made that since the agent

takes his 20 per cent. commission out of all the premiums he collects, that it is altogether likely that he gets some considerable share of that part that he collects for taxes, probably very much in excess of what it costs to collect taxes directly. This method is then wasteful in money as well as in moral effect.

The Valued Policy Law.

In a number of states there is a law called the "valued policy law." This law provides that in the case of a total loss, the face of the policy shall be taken as conclusive evidence of the amount of the loss, that is, that in the event of a total loss the company becomes liable for the full face value of the policy. Wisconsin was the first state to pass such a law, and it is said that the cause of its passage was the fact that the farmers had been sufferers at the hands of sharpers who sold lightning rods and insurance, and when the farmer came to collect on his losses he found he was greatly over insured, and that, even in the case of a total loss, he could collect only a part of the sum that he had paid premiums on.

The law was designed to prevent over insurance. Incidentally, however, it breaks down one of the fundamental principles of insurance,— indemnity. One can be indemnified only for what he has lost; now if a house worth $7,000 is insured for $10,000 and the owner recovers $10,000 in case it is completely burned, he has received only $7,000 of *indemnity;* the other $3,000 was won on a gamble, for the owner of the house was willing to pay the premiums on this extra amount in order to have the chance to win it if the house burned. But, when the event upon which the gamble depends is something that is within the control of the person interested, we have a "moral hazard," namely, in this case, the hazard that the insured will either set fire to his house or that he will relax the carefulness which he would have maintained if the burning of his house were going to mean a loss instead of a gain.

A law which would really prevent over insurance would be a good thing, but the valued policy law is impracticable from this point of view. It was no doubt assumed that the law would operate to make the agents assure themselves that in every case

the face of the policy was not in excess of the value of the property. But as a practical matter this is impossible under existing conditions. It would require not only a careful inspection of the property by the agent, but in many or most cases a detailed appraisal, and the cost of such work,— which would, of course, have to be borne by the policy-holder,— would double the rates. Besides that, it would still be ineffective, for the value of the property can so easily change: conditions can arise — for instance a business ceases to be profitable — which will make the property deteriorate in value. There is a serious moral hazard whenever a property, for which there is no demand and which is not producing an income, can be sold, by setting fire to it, to an insurance company for more than it is worth.

Desirable as it would seem to be, theoretically, to place upon the insurer the duty of determining values before the insurance is effected, as a practical matter it cannot be done; it is a part of the duty of the insured himself, for he of all persons is the one who knows. In the process of effecting insurance there are many different pieces of work to be done; many of these quite rightfully fall upon the company, but there are certain ones which must of necessity devolve upon the insured. Some of these are made warranties in the contract, but others are automatically fixed by the form of the contract. The duty, or self-interest, of the insured in determining the value of the property is fixed by the provisions of the ordinary policy that the payment by the company shall be only for loss actually sustained, that is the policy provides indemnity but in no case beyond the so-called face of the policy.

Of course, anything that can be done to make the insurer careful not to over insure is desirable, provided this good is not secured at too great a cost. A slight step toward this and one that might go some distance toward mitigating the hard feelings of the insured would be a provision that, if upon settlement of a loss the property was found to be over insured, the excess premiums were to be returned.

There is no question that theoretically and practically a valued policy law is against public policy; and yet it must be admitted that the actual effects of it in the states where it is in operation are not so serious as might be anticipated. The reasons for this are perhaps two: the companies have largely ceased to write

business on which under this form of policy there is a serious moral hazard; and, second, the effect of the law has been largely nullified in the courts in their interpretation of "total," thus making the proportion of "total" losses in which the valued feature is operative, very small.

It can be said then in general about the law that where it is in free operation it must and does increase the moral hazard, but that in actual practice its effect is, to a certain extent, to prevent free insurance, but in effect it is largely a dead letter.

The Co-insurance Clause.

In much the same way that the rate in life insurance depends upon the age of the insured so the rate in fire insurance depends upon how large a percentage of the value is insured. This is not at all evident at first sight, and must be explained.

Let us take so extreme a case that the force of the principle will be compelling. Suppose two stocks of goods of the same character and similarly situated, the only difference being that the first is worth only $5,000, while the second is worth $100,000. Let us suppose that in each case there is an insurance for just $5,000, that being the entire amount of insurance. Now under which of these policies has the underwriter more at risk? In the first case it will take a total loss to exhaust the insurance and a 5 per cent. loss will amount to only $250, but in the second case any loss that is over 5 per cent. of the value will exhaust the whole amount. It is vastly more likely evidently that there will be a loss of 5 per cent. (or over) in the second case than that there will be a total loss in the first case, for manifestly there are many fires that burn 5 per cent. or over to the few that burn all. The insurance company could therefore by no means afford to sell the insurance in the two cases for the same price. This is the simplest possible demonstration of the fact that the insurance rate must depend upon the ratio of insurance to value. In the first case this ratio was 100 per cent., in the second case 5 per cent.; the rate must be higher as the ratio becomes lower.

This can be stated in another way: the real cost of the insurance depends upon the average loss payable under the policy, but this will manifestly be greater if the values are greater.

This can now be brought out in more detail. There are statistics that show that on a certain class of buildings there are approximately the following losses for every $100 worth of property value:

	On the average, out of every 100 fires:	
82	that do a damage of less than $10 on the average $2, making altogether a loss of	$164 00
6	that do a damage of less than $20 and more than $10 on the average $14, making altogether a loss of	84 00
3	that do a damage of less than $30 and more than $20 on the average $25, making altogether a loss of	75 00
2	that do a damage of less than $40 and more than $30 on the average $35, making altogether a loss of	70 00
1	that does a damage of less than $50 and more than $40 on the average $45, making altogether a loss of	45 00
1	that does a damage of less than $60 and more than $50 on the average $55, making altogether a loss of	55 00
1	that does a damage of less than $70 and more than $60 on the average $65, making altogether a loss of	65 00
1	that does a damage of less than $80 and more than $70 on the average $75, making altogether a loss of	75 00
1	that does a damage of less than $90 and more than $80 on the average $85, making altogether a loss of	85 00
2	that do a damage of less than $100 and more than $90 on the average $99, making altogether a loss of	198 00
100	Total	$916 00

That is, every 100 fires burn altogether $916 worth of property, supposing the property in each case to have had a value of $100. Now if on each of these houses just $10 of insurance had been carried for every $100 of value, the losses to the companies would have been as follows:

82	losses of $2 each, making altogether.....	$164 00
18	losses of $10 each, making altogether.....	180 00
100	Total	$344 00

It is obvious that on the eighteen losses in which the damage was more than $10 only the face of the policy would be payable. If we assume that there is one fire out of every 100 houses at risk, 100 fires will represent 10,000 risks and the premium that must be collected from each of these 10,000 risks to pay this loss of $344 will be $344/10,000 or 3.44 cents. This, it is understood, is the net premium without any loading for expense. Three and forty-four one hundredths cents is the actual premium, but the rate, based on $100 is ten times this, or 34.4 cents; that is, $10 of insurance at the rate of 34.4 cents per $100 amounts to a premium of 3.44 cents.

Now in an exactly similar way, the cost to the company of carrying $20 of insurance can be computed; there will be:

82	losses of $2, making altogether.....	$164 00
6	losses of $14, making altogether.....	84 00
12	losses of $20, making altogether.....	240 00
100	Total	$488 00

To pay this loss each of the 10,000 risks must be assessed $1,488/10,000 or 4.88 cents. This is the premium for $20 of insurance but the rate, on the basis of $100 is five times this or 24.4 cents; that is $20 of insurance at a rate of 24.4 cents per $100 will amount to a premium of 4.88 cents.

This same principle can be carried out for any given amount of insurance. Take just one more case: suppose the insurance is $80. There will then be payable by the company:

82 losses of $2, making altogether		$164 00
6 losses of $14, making altogether		84 00
3 losses of $25, making altogether		75 00
2 losses of $35, making altogether		70 00
1 loss of $45, making altogether		45 00
1 loss of $55, making altogether		55 00
1 loss of $65, making altogether		65 00
1 loss of $75, making altogether		75 00
3 losses of $80, making altogether		240 00
100	Total	$873 00

The sum that must be collected from each of the 10,000 risks will be $873/10,000 or 8.73 cents. This is the premium for $80 of insurance, but the rate on the basis of $100 will be 5/4 of this or 10.91 cents, that is, $80 of insurance at a rate of 10.91 cents per $100 gives a premium of 8.73 cents.

In the table below are presented the rates that will correspond to various percentages of insurance to value:

If the insurance is 10% of the value, the rate should be	$0 34
If the insurance is 20% of the value, the rate should be	24
If the insurance is 30% of the value, the rate should be	20
If the insurance is 40% of the value, the rate should be	17
If the insurance is 50% of the value, the rate should be	15
If the insurance is 60% of the value, the rate should be	13
If the insurance is 70% of the value, the rate should be	12
If the insurance is 80% of the value, the rate should be	11
If the insurance is 90% of the value, the rate should be	10
If the insurance is 100% of the value, the rate should be	9

This is not only a practical demonstration of the fact that the rate in fire insurance must depend upon the percentage of insurance carried, but, if the figures upon which it is based were correct, it would be a determination of what the net rate should be. It is understood, however, that the particular figures here given are only in way of illustration; the principle that the rate falls as the ratio of insurance carried increases holds whatever the figures that are used, even though large losses were relatively more frequent than small ones.

The principle that is here established is that the rate in fire insurance must equitably depend not only upon the class of risk, but upon the percentage of insurance carried, and that for example a rate of ninety-three cents which might be right if 80 per cent. of insurance were carried would be much too low if only 30 per cent. were carried.

The situation is exactly the same as in life insurance where the rate must equitably depend upon the age. A premium of $23 for a man 25 years old would be far too low for a man 65 years old. If insurance were sold to these two men at the same price the effect would be that the young man would be helping to pay for the hazard of the older man and, still more to the point, that eventually young men would refuse to enter into such an unfair bargain and the company would be doing a business only with old men for whom confessedly the rate would be too low.

The principle is exactly the same in fire insurance. If a man who carries 80 per cent. of insurance is charged the same rate as a man who carries only 30 per cent. the effect is that the man who carries 80 per cent. will be helping to pay for the hazard of him who carries only 30 per cent., and still more to the point that the tendency would be, under this unfair arrangement, for men to refuse to insure for the larger amount. But that this "adverse selection" does not operate so strongly as in life insurance is due to two causes, first, that the principle is not so clearly seen as in life insurance, and, second, that full, or nearly full insurance is in most cases needed at any price; this is particularly so where the property is mortgaged, the conditions of the mortgage requiring that the property be well covered by insurance. The situation then is this: equity to the policy-holder demands that the rate should be adjusted to the percentage of insurance carried and to a certain extent the result is, if this is not done, that insurers will carry less insurance than conditions demand.

Now, it is impossible to base a rate upon the percentage of insurance to value, unless this percentage is known. But to know it means to know the value of the property and here we are brought up against the same difficulty that arises in the case of the valued policy, namely, that, as a practical matter, it is impossible for the company to ascertain values. In the consideration of the valued policy law we have already reached the conclusion that this work

must devolve upon the insured for the reason that he, if anybody, is the one who knows the values, at any rate he ought to know.

That the responsibility belongs with the insured is recognized in an agreement known as the co-insurance clause, in which the insured warrants that he will maintain at least a certain specified ratio of insurance to value and, *failing so to do, he shall be considered to be himself an insurer for the deficit.*

That is, a failure to maintain the provisions of this warranty, instead of tending to invalidate the insurance, simply brings in the insured in a new rôle, namely, as insurer for the balance by which the actual insurance that he carries falls short of what he warranted to carry.

Or, to state it still differently, by the agreement the warranty is automatically observed because at the instant that the insurance in companies falls short of the required amount the insured himself enters as a " co-insurer."

This, when understood, is reasonable, but its consequences are not easily seen. To understand its workings completely, it is necessary to take some concrete cases.

In the following examples an 80 per cent. co-insurance clause will be understood, that is, one in which the insured warrants that he will keep his property insured for at least 80 per cent. of its value. Only cases will be considered in which the insured fails to live up to his agreement, as, of course, otherwise the settlements will be the same as though there were no such clause.

Case I.

Value	$100,000
Insurance	50,000
Loss	20,000

Here the agreement called for $80,000 of insurance; the policy-holder, is therefore, a co-insurer for $30,000. The insurance therefore stands:

Companies	$50,000
Himself	30,000
Total	$80,000

On any loss, therefore, the companies contribute 5/8 and he himself contributes 3/8; on the loss of $20,000, therefore, the contributions are:

Companies	$12,500
Himself	7,500

That is, in spite of the fact that he carries insurance of $50,000 he is able to collect only $12,500; the balance of the loss he is compelled to stand himself; why? because his rate was based on the assumption that he would carry 80 per cent. of insurance; in reality he carried only 50 per cent. of insurance and so doing he should have paid a higher rate. The rate that he paid was not sufficient under these circumstances to buy complete indemnity and the deficiency was measured by his own forced contribution of $7,500.

Case II.

Value	$100,000
Insurance	50,000
Loss	80,000

Here the value and insurance are the same as in the previous case, the only difference being that the loss is larger, namely, as it happens, equal to the amount of insurance that he had agreed to carry.

Here as before, as he is a co-insurer for $30,000, the company's contribution will be 5/8 and his 3/8. But 5/8 of $80,000 is $50,000, the full face value of his policy; he, therefore, obtains from the company the full amount of his insurance, the $30,000, that he must himself contribute, being only the amount by which his insurance falls short of the loss.

Case III.

Value	$100,000
Insurance	50,000
Loss	90,000

Here as in the two previous cases, the contribution of the company will be ⅝ and his own contribution ⅜. But ⅝ of $90,000 is $56,250. This is more than the face of the policy, and as the liability of the company ceases at $50,000, the policy-holder must stand this loss of $6,250 in addition to his own contribution as a co-insurer of $33,750, that is, altogether the $40,000 by which his loss exceeds his insurance.

The conclusions are these: the co-insurance clause is operative, in effect, only when the loss is less than that percentage of the value that is named in the agreement; on losses above this, for instance total losses, the company is liable for the entire amount of the insurance. An interesting consequence of this may be adverted to. If the co-insurance clause had been in use to any large extent in San Francisco the rates would have been corresponding lower and the amount of insurance carried would have been higher and yet the insured would have received the full amount of their insurance because the losses were all practically total.

The lowering of the rate has been referred to; the effect of the introduction of the co-insurance clause is, of course, so far as the liability of the company is concerned, to fix the ratio of insurance to value, so that it is possible and customary, upon this basis, to make the rate depend upon the percentage as we have seen that in equity is due.

Usually 80 per cent. is taken as the standard, the rate for 90 per cent. and 100 per cent. co-insurance being proportionately lower and the rate for percentages less than 80 being proportionately higher. In some places, as in New York city, the insured is not free to choose what percentage of insurance he will carry; in that case, usually, as in New York city, 80 per cent. or over is prescribed. In practice this is not so arbitrary and harsh as might seem to be the case, first, because most of the insured desire to carry at least 80 per cent. of insurance and, second, because where, as in fire-proof office buildings, the insured might very naturally desire to carry only partial insurance, as a matter of fact full insurance can be given at scarcely any additional cost.

The general conclusions we reach with regard to the coinsurance clause are these: that the principle upon which it is founded,

namely, that rates should be based upon the percentage of insurance carried, is not only sound but is absolutely requisite if the equities of the insured are to be preserved; second, that the coinsurance clause rightly recognizes that as a practical matter the responsibility for maintaining a given percentage of insurance must rest with the insured; third, that the operation of the agreement is automatic and fair.

The objections that can be urged to the coinsurance clause are not on theoretical but on practical grounds and are entirely due to the fact that it is in use where it is not understood. It is perfectly true that the coinsurance clause is a dangerous thing for a person who does not understand it and for a person who does not keep close watch of his values,— not dangerous in the sense that the insured will not get what he ought to get, but in the sense that he will not get what he thinks he is going to get. But, should the government undertake to shield those who enter into a contract which they do not understand if this must be done at the expense of the real equities of the mass of the insured?

The very purpose of the coinsurance clause is to place upon the insured the responsibility for ascertaining the value of his property, and for keeping it properly insured; and it goes without saying that, having assumed this responsibility, he must live up to it or he will be caught at a disadvantage.

All that the insured needs to know, as a practical matter, is that in signing, say, an 80 per cent. coinsurance clause he agrees to keep at least 80 per cent. of the value of his property covered by insurance, and that in failing to do so he makes himself liable to the loss of part of his indemnity.

A number of states have laws prohibiting the use of the coinsurance clause, but among the larger, more intelligent buyers of insurance the demand has been so great for it that in one state, Michigan, a law was passed making it legal if signed by the insured; and in another state, Missouri, the law by common consent of both parties is not observed, that is, the coinsurance clause is used although settlements under it cannot legally be enforced by the companies if the insured cares to resist them.

The enactment of an anti-coinsurance law in a state like New York, where there are so many large values to be protected, and

where the general standard of intelligence on insurance matters is high, would result in serious inequities and would meet with strong opposition from the insured.

The antagonism toward the coinsurance clause is very typical of the public attitude toward insurance in general. The policy-holder who, by his own carelessness, has been caught under-insured and hence cannot collect full indemnity loses sight, in the presence of his own personal and immediate grievance, of the fact that he and other policy-holders were getting their insurance at a lower price because of this very agreement whose adverse effect he now feels.

The equities of the mass are lost sight of; in other words, the short view takes the place of the long view. But the very nature of insurance demands that the long view shall prevail, otherwise the whole system breaks down.

Expense.

Out of every dollar that is paid into a fire insurance company on the average 38½ cents is paid out for expense. This seems a very large amount for a business which consists, essentially, simply in the collection and subsequent distribution of money. The following may be taken to be a normal distribution of this:

	Per cent.
Salaries, rent and general administrative expense	7.5
Commissions	21.5
Taxes	2.5
Special agents—salaries and expenses	3.5
Inspections, local boards, etc	1.5
Printing, postage, etc	2.
	38.5

The largest single item of expense is the 21.5 per cent. that is paid to agents for commissions. This is a large amount to pay to a middleman. It is necessary to see just what value is received for this, just what the service is which is performed by agents.

Agents.

The agent in fire insurance is far more important than is generally recognized. He it is who virtually decides what risks the company shall take, and what it shall refuse, and what shall be the specific, written terms of the policy. While the company exercises the right of review, it is manifestly necessary that it should in the main rely upon the judgment of its agents. The character of a company is therefore very largely determined by the character of its agents. It is in their power to make or ruin a company's business.

The agent is the one who comes in direct personal contact with the insured, the company never. Furthermore business is usually done by the insured with the agent on a purely personal basis rather than because he represents some particular company. The property owner gives his business to an agent whom he knows and in whom he has confidence and in general lets him select the company that he will place it in. The fact that the agent has this personal clientele puts him in the position virtually of controlling a certain amount of business; as a matter of fact and as a matter of law, the business belongs to him rather than to the companies; it has been decided by the courts, for instance, that the expiration books are the property of the agent and cannot be claimed by the company.

It will be easily realized then why the agents have such a dominant influence. It is *they* who control the business; the companies must come to *them* for business, and in general must come to their terms. The companies seek the agents, not agents the companies, except to a degree in large cities.

Fire insurance agents occupy a very curious and anomalous position. Legally and in fact they are agents for the companies and must protect the companies' interests, but at the same time their personal relationship with the insured makes them equally solicitous for his best interests. Add to this the fact that the agent represents not one but several companies and that he is called upon to distribute his favors among them all, and we have a notable example of a man who is serving many masters. That the system works as well as it does is remarkable and particularly when the

equally anomalous condition is noticed that in general agents are paid a commission upon the premium receipts, so that a large volume of business and particularly of hazardous, high-rated business is for the benefit of the agent, irrespective of whether the results are favorable or unfavorable to the company.

The tendency is for companies in their competition for business to appoint agents, not for their real worth, but because of their ability to control business, and this even goes so far as the appointment of persons who are qualified in no other way, persons who, because of their connections or because of the sympathy they command for some misfortune, can turn over certain lines.

When one considers the very responsible position of an agent, not only in binding the company, but in consideration of the fact that it is in his power, if he is ignorant or careless or otherwise wrongly disposed, to write policies for his clients which will not properly protect them, the bad economic effect of the appointment of incapable agents is apparent.

Not only, however, do companies appoint agents who are not properly qualified or who have no qualifications beyond the fact that they can control a certain amount of business, but the tendency is to multiply agencies beyond the point where they serve an economic purpose, and to a point where they exist for purely competitive reasons. In other words this is an instance where competition serves no useful economic end.

Competition.

We may consider competition to mean a state in which sellers are trying to attract buyers and if the competition is open there is no bar to this. The inducements offered may be of various kinds; in the first place the inducement may be a reduced price. This inducement is not made unless the buyers are in a position to understand and take advantage of it. In the recent investigation of life insurance, it was found that competition had not acted to reduce prices, for the reason that the real price was largely dependent upon the dividends paid and this was so technical a matter that it was not understood by the insured. In life insurance competition is turned in other entirely different directions.

In fire insurance, on the contrary, open competition has acted, as we have seen, invariably to a reduction of rates beyond a point that was to the best interests of either insurer or insured. The result has been that either by agreement or otherwise prices in fire insurance have been to a degree standardized and competition in that direction to that extent limited.

Commissions.

Inducements therefore of some further kind must be made. Now in fire insurance, the business is controlled as we have seen by the agents. The companies, therefore, instead of trying to influence the insured make inducements to the agents. These inducements are of course mainly high commissions. In addition to this, however, the companies, as has been said, try to induce business by appointing more agents than are necessary and agents that are not really competent.

Competition, therefore, in fire insurance has acted badly both as regards rates and expenses, but in different ways. It has driven rates too low and expenses too high. And just as the companies have combined to raise rates to a proper level and to standardize them, so the more conservative companies have combined to lower commissions and to standardize them. The so-called Eastern Union in this territory and the Western Union in the Middle West limit their members to a definite scale of commission. It should be said, however, that certain of the largest cities are not included under the jurisdiction of these bodies; they are called excepted cities.

In the Eastern Union territory the commission paid has been a flat 15 per cent. In the Western Union territory there has been a graded scale of 25 per cent. on preferred risks, 20 per cent. on brick mercantile buildings, and 15 per cent. on other classes. In the excepted cities, the commissions are open; in general they run much higher than in Union territory, in some cases as high as 45 per cent.

The membership in the Unions consists in general of the strongest, most conservative companies. The non-Union companies outnumber the Union companies, but in amount of business done the Union companies are much in the lead.

The non-Union companies are with few exceptions companies that are so weak as to be unable to procure the best business without offering some inducement either to the policy-holder in a reduction of rates (the non-Union companies are largely non-Board companies also) or to the agent in an increased commission. In the case of preferred risks this competition becomes intense and often leads to commissions that are absurd. In fact, competition on "preferred risks" among the non-Union companies has gone so far as to drive them, in Western Union territory, into a "non-Union" union, called a "Bureau," with a scale of commissions somewhat higher than that of the Union companies.

In general the Union companies have been able fairly well to meet the competition of the non-Union companies, the advantage of their greater strength more than offsetting the inducements offered by their competitors, but in the Eastern Union territory the competition has recently become so intense that the Eastern Union has been on the verge of dissolution. It has been saved only by yielding to the pressure of the agents and raising its commissions to a graded scale similar to that of the Western Union; at the same time, however, steps have been taken to reduce commissions in the excepted cities.

The whole subject of commissions is a very perplexing one; it is a matter which is in a continual state of agitation between the companies and the agents; the companies admit that conditions are wrong but they profess to be at a loss to know how to better them and many underwriters go so far as to suggest that it may be necessary for the State to limit commissions in fire insurance as it has limited commissions in life insurance. An impartial observer, however, is moved to ask, since it is granted that most of the trouble about commissions is due to preferred risks, why the companies should not stop hacking at superficial evils and attack the root of the matter by reducing the premium rates on "preferred risks;" to satisfy the public that they are thoroughly in earnest in their undoubted desire to reduce the expense of the business this step must be taken.

It is strongly contended by many underwriters that the high commissions paid on preferred risks are not too high; that the business, which is mostly dwelling-house risks, comes in such

small pieces and is in other ways so difficult to write that it should be paid a higher rate. There is some justice in this, but it does not quiet the matter, for the companies by *offering* higher commissions on this class are responsible for the situation, not the agents by *demanding* them.

It is possible that in some cases at least, the commissions on preferred business are not too high, but nevertheless they are, in the way that they have come about, a clear indication that the business is rated too high.

The making of the rates equitable on all classes and hence the elimination, so far as that is possible, of the "preferring" of any one class would perhaps not solve the commission problem but it would certainly go some distance in that direction.

The proposal to limit commissions by law should be kept as a last resort. There is an intimate relation between rates and commissions, but of the two the subject of rates is more fundamental. Rates are getting steadily more equitable; furthermore, the fire insurance business is changing now very rapidly; time should be given to see whether the further progress of rate equalization and the rapidly changing conditions and spirit of the business will not bring improvements in the matter of commissions. If this is not accomplished it would certainly be within the proper function of the State to see that this expense is regulated by law.

In this connection the subject of contingent commissions should be spoken of. Theoretically it seems entirely wrong to pay an agent a flat commission upon premiums, because by this system of payment he fails to have his interest identified with the interest of the company and the public in the prevention of fire-loss. He gets his premium whether the risk burns or not, and in fact to a degree an occasional fire helps his business by bringing to peoples' attention the need of insurance. As to the actual workings of the system only this can be said: there are all kinds of agents as there are all kinds of men in general; some are very careless about writing risks, some are very careful. But on the whole agents are not interested in fire-prevention to any such degree as the companies.

This seems radically wrong, for no one touches the problem of fire-prevention so intimately. It has been proposed to force an interest in the agent in fire-prevention by making part of his commis-

sion contingent upon the earnings of the company upon the business which he has written. In fact one large and prosperous company already pays many of its agents upon this basis. Some few objections have been made to this plan, but none that seem important. The plan of paying agents contingent commissions was endorsed by the last Convention of Insurance Commissioners. Your Committee does not recommend legislation upon this subject, but thoroughly commends the principle of contingent commissions and believes that it should be put into general practice by the companies.

The expense problem is unquestionably the most perplexing problem in the business today. It is seen that the tendency of free competition is to drive commissions higher and higher and it is difficult to see what will restrain this tendency except combinations of the companies to regulate commissions. Such organizations then as the Eastern Union should be encouraged.* In addition to the expense that arises from high commissions we have also seen that there is a waste in the business produced by too great a number of agents and particularly by the appointment of agents who are incapable of performing any real economic service.

The companies show no signs of taking any steps to improve this latter condition. The better class of agents, however, through their organzations, are moving in this matter, not so much for the good of the public as for the sake of better conditions in the business itself; it has been freely suggested by agents that the State should undertake to protect the public from incompetency in this field. Certainly if the State finds it desirable to go so far as to set up a standard for veterinary surgeons and for plumbers it is reasonable that it should set up a standard for the agent who, by carelessness or incompetence, can invalidate his client's insurance or plunge the companies into severe losses. It would seem desirable that an examination for competency should be provided by statute or that the Superintendent of Insurance should be empowered to fix standards of competency and license only those who are able to comply therewith; furthermore, that a fee should be charged. This would help to reduce the number of unnecessary

* Curious to say, however, in some states companies are denied the right to combine even on the subject of commissions.

agents, particularly if the fee were large. It is doubtful, however, whether as a practical matter, the State could go very far in this direction without bringing into operation the retaliatory laws of other states to the disadvantage of domestic companies.

Expense and Fire-Prevention.

One other aspect of the expense problem must be spoken of. Attention has already been called to the fact that the tendency in insurance is now very strongly toward "prevention." In one field, steam boiler insurance, this has gone so far that the preventive work of the companies has become far more important than insurance proper. It is so obvious that the blowing up of boilers should be prevented rather than that they should be allowed to blow up and the losses distributed that as a matter of fact over 80 per cent. of the premiums are used for inspection and other preventive work.

It ought to be almost equally obvious that fires and deaths should be prevented; we are accustomed, however, to think of them both as inevitable; death is inevitable, to be sure, but not *untimely* death; we are coming more and more to know that fire and disease should both be eradicated.

Now in the face of this tendency the question of expense, serious as it is now, is a still more serious one to meddle with. For if it is really true that the destiny of insurance is to become prevention, as steam boiler insurance has become, the expense ratio must increase instead of diminish, namely by all the expense of inspections and other preventive work. Arbitrarily then to limit expense would be a very dangerous step for it might discourage this very development.

Brokers.

The fire insurance business is characterized by its great variety of local conditions; the same company often does business very differently in different states and even in different parts of the same state. It is impossible for instance to treat the broker in fire insurance in a general way; in one part of the country he is looked upon as an unmixed evil and in another part he has made for himself a thoroughly honorable and useful place.

It is evident that there must be middlemen between the company and the insured. In the country and small city these are the local agents; in some of the larger cities also the business is entirely in the hands of the agents and their paid solicitors, but in most of the large cities there has grown up, to a greater or less extent, a class of "brokers" who bring the business of their clients to the companies. The agent and the broker are largely complementary, that is the presence of one to a degree usually means the absence of the other. In New York city for instance business is done almost wholly through brokers and there are but few local agents.

It is impossible in large cities for the insured to come into direct contact with the company; whether the middleman is the agent (and his paid solicitors) or the broker is, in an economic sense, largely a matter of indifference, provided both are efficient — that the work of each is real service.

Fundamentally the broker is one who can control a line of insurance; he virtually sells it to the company; his pay is in the form of a commission. If this were the whole of the service that the broker performed (and in some cases it is hardly more than this) his existence would hardly be justified; at best the only economic service that he performed would be the covering of some property with insurance which would otherwise be allowed to go unprotected.

The broker has however in general developed to a point several steps in advance of this. Competition for business has forced him to find ways to make himself useful. That broker will get the most business who can give the most value in return.

Now, in a large city where the insurable values are large, where the conditions are complex, where the rating is done by schedule, where enough good insurance is difficult to find, it is not hard for the broker to find valuable services that he can acceptably perform. They are much the same services which, in the absence of brokers, would be performed by agents. He becomes the expert adviser of the insured, he inspects his property, he studies his schedule, he finds what changes can be made to reduce his rate, he plans these changes in detail, or if the building is still in the hands of the architect, he joins with the architect in a study to make it a superior risk, he decides the written part of the policy and the appro-

priate forms, he picks out the companies to whom the risk is to be given, he gives legal advice, he attends to adjustments of losses — all of these services and perhaps others are performed by the brokers who have the most successfully found their place.

In all of this the broker is acting as agent for the insured (although he is paid by the companies). It can hardly be denied that one who has found as much work as this to do has justified his existence. And there is perhaps a certain advantage in his representing the policyholder instead of the company for it is beyond question that the man who has large insurable interests needs this expert advice.

But to perform these services requires the employment of a large office force and a number of experts, and so, either as cause or effect, it has happened that in general it is the larger offices that can offer the most capable service. The brokerage "evil" has to do not with this class but rather with those who are hardly more than solicitors. There are about 7,500 brokers that are certificated by the New York Fire Insurance Exchange; of these probably 5 per cent. do most of the business. Do the remaining 7,000 perform any really important service for the public? If not, had the majority of them not better be eliminated?

It is not true, to be sure, that the support of these falls entirely upon the insurance business, for most of them combine their insurance with real estate or something else. It is not an easy question to dispose of. Even granted that a number of members of a community are out of place economically, it is quite another question to know the wisdom of whether and how to try to put them right. Even if these brokers were eliminated as brokers would they not turn up as paid solicitors in the offices and things go on in much the same way?

However, what has been said about the qualifications of agents applies almost as strongly to brokers. This Committee believes that it is desirable that the State should fix a standard of competence both for agents and brokers; furthermore, that a broker should be required to pay a license fee to the State.

Brokers occupy a somewhat anomalous position in that they are agents of the insured and yet are licensed and paid by the companies. Trouble has often arisen from this fact. The policyholder has found himself unprotected because of failure of his

broker to turn over his premiums to the company; furthermore, it is often impossible in the case of cancellations for the companies to obtain return commissions from the broker. To correct this there have been several proposals; one way to handle this matter would be to require a bond from the broker, another way would be to make the broker, as a matter of law, the agent of the company.

At first glance the idea of requiring a bond of the brokers for the faithful performance of their duties recommends itself, but on a closer examination the question arises, why single out one form of occupation and require it to be subjected to restrictions of this nature when the State does not require anything of the kind in other professions where a license is necessary and where the fiduciary element is present to a still greater degree.

For example the State licenses attorneys-at-law, and it is a matter of common knowledge that these men are called upon to handle their clients' or principals' money in large amounts. No undertaking is required of them that they will be honest before the authority is granted them to practice their profession. Such matters are left to be taken care of by the penal statutes, and the committee believe that this is as it should be. If provision is made to license the broker and one of the conditions for the granting of the license is that he must be trustworthy and if it is made easy for such license to be revoked upon its appearing that he has ceased to be such, and if his conviction is made possible for any form of dishonesty or on proof that he has violated the insurance law, or even on proof that he is guilty of such sharp practices as to make him untrustworthy, it would seem that the object sought in the suggested bond requirement had been amply attained.

The committee has endeavored to cover this very point in a statute which will be submitted and to cover it in such a way as to eliminate the dishonest broker without doing violence to the principles of good public policy.

The principle that your committee has acted upon in its conclusions is that the State should go no further in the regulation of insurance companies than actual conditions seem to demand. Free competition should be considered to be the normal basis, in general, for business activity. If however it should be demonstrated that this condition is leading to grave abuses it would be

the function and duty of the State to interfere; it is an open question for instance whether the State will not find it necessary some time to regulate commissions.

When however the companies leave the condition of open competition and form combinations it is recognized that the State may rightly take steps to guarantee to the public that this power that the companies so gain shall not be abused. The exact attitude of the Committee on this point has been fully expressed elsewhere in this report.

In its recommendations however, your Committee goes a step further than to provide merely for *publicity;* it is prepared to recommend that combinations of companies should not be allowed to exercise a control over brokers. The correctness of this principal is open to argument. The Committee, however, feels very strongly that the pledges that are now required by rating organizations of brokers give to such combinations of companies powers which, if they are to be exercised at all, should belong to the State. Such pledges now give to the Exchange a life and death power over the broker and furthermore make him an important instrument in carrying out the purposes of the combination. It may be granted that in general these purposes are good and yet it is offensive to one's sense of liberty that this power should be in the control of a combination to be exercised not upon the agents of the companies but upon the agents of the insured.

It is believed that the good of the business demands combination but this combination must not be maintained by a control over a non-participating outside element. Whatever powers are necessary to secure the proper activity of the broker should be assumed by the State. It might be well, however, that in the exercise of this power the Exchanges should be called upon in an advisory capacity.

Rebates.

Commissions to brokers are paid out of the premiums by the companies. If it is granted that brokers are performing a valuable expert service for the insured it would seem natural and desirable that they should be paid by the insured for the service performed just as lawyers are paid; of course, it is in the end the insured that pays the broker even if as now he pays him indirectly through his insurance premiums. It is doubtful, how-

ever, whether the payment of the broker directly by the insured could be made to work. Theoretically it would be much better for it would stop rebating. In that case every man would pay the same price for his insurance (he should, of course, get it for the regular price less the regular commission to brokers), but he would make his own bargain with his broker. At present the insured are all on the same terms both as regards the cost of their insurance proper and that part of the premium that goes to the broker. The practical consequence of this method of payment is that some brokers buy their business by giving rebates.

That one man should be able to get the service of his broker more cheaply than another (which is what a rebate amounts to) is not wrong; it is purely a competitive condition that in a majority of cases would be founded on reason, but that it should be accomplished by the passing of a rebate is what is reprehensible. In the one case the bargain with the broker is open and straightforward, in the other case it is indirect and underground.

As a practical matter rebating in any form works badly. It is a form of discrimination in which a straightforward man is at a disadvantage. Practically all of the underwriters' organizations attempt to prevent rebating; the New York Fire Insurance Exchange for instance requires from every broker a pledge not to rebate, the penalty being the revoking of his license. If such a pledge as this is broken, and assertions are freely made that this is not uncommon in New York, the discrimination is all the more marked, for now it is not merely the straightforward against the underhanded, but the honorable against the dishonorable.

If rebating is a really serious evil and if the payment of brokers by the insured is impracticable, the matter should be assumed by the State and an anti-rebate law should be passed to govern both agents and brokers. While this would not absolutely cure rebating it would go further than the underwriters themselves can go in the matter.

Limitation of Conflagration Liability.

Since free competition in fire insurance has been shown to have produced bad effects both in driving rates too low and in driving commissions too high, the question arises whether competition produces beneficial results of any kind. There is another induce-

ment beside that of price that can be offered to the policy holder and that is the quality of the insurance. The actual form of policy is standardized; this on the whole is undoubtedly a good thing, particularly considering the importance of concurrency, but, in passing, attention may be called to the fact that thereby the opportunity is lost for the companies to improve the contract by competition with each other. Competition here then as well as on rates and commissions is limited.

There remains, however, one direction still open; the companies can compete in strength. The State to be sure here prescribes a legal minimum of strength and companies that are able to come up to this standard are called "authorized" companies. But among authorized companies there is a vast difference, and while it is not the function of the State to call attention to this, it should afford the policy holder every opportunity to find it out for himself. This the State can do by requiring the companies to make public all important facts. It should be plainly understood by the public that an "authorized" company has not, because it is authorized, been stamped with the State's approval beyond the point of having complied with certain minimum requirements.

In reality in fire insurance the conditions that are required by the State regarding capital, surplus and reserve are far from securing the stability that similar conditions secure for life insurance companies; this is because of the conflagration hazard. It It is possible for a company to write so recklessly in a single city or even in a single conflagration district as to make its indemnity in case of conflagration worth almost nothing. A comparison of the total assets of a company and its total risks is not very significant. Far more important is a comparison of its assets with the amount it has at risk at points that are subject to conflagration.

Theoretically it is within the province of the State to exercise some control over this matter. A certain part of the premiums are for the conflagration hazard and should be held as a reserve therefor; since conflagrations come too infrequently, however, to afford an average the size of this reserve should be determined by reference to the company's liability in conflagration districts. The so-called surplus of a company is in reality conflagration reserve and the plan that has just been referred to would recognize this as a

liability; that is, it would require this conflagration reserve or surplus to be commensurate with the amount at risk in a conflagration district instead of, as at present, leaving the matter entirely open; or, looked at from another point of view, it would limit the writings of a company in a conflagration district, so as to make them bear some given relation to the surplus.

The objections to this are wholly on the grounds of practicability. It has been recognized that the conflagration hazard has no proper place in insurance, that there is no machinery in the system that will properly take care of it, and, accordingly, it is too much to expect that the ordinary principles regarding reserves can be strictly adhered to. In practice there are at least two serious difficulties; first, the inability of companies, immediately after a serious conflagration, to hold the proper conflagration reserves, and, second, the fact that a restriction upon the amount that a company could write in a conflagration district would almost certainly result in a shortage of insurance.

The actual facts at present are that companies treat this matter in the most widely different ways. Some companies write so carefully that they are within their ability to pay in full in even the most serious conflagration, while other companies write so recklessly that in a similar case they could not pay ten cents on the dollar.

The difference partly reflects the different points of view of underwriters with regard to the likelihood of conflagrations, but it is also true that at one extreme are found very largely the large, well established, conservative companies whose theory of underwriting contemplates a long, continuous existence and, at the other extreme, small, unsubstantial companies which are admittedly only gambling on the chance of being completely ruined. Such companies in a serious conflagration expect to go under or at any rate to be able to settle their claims at a fraction of their face value.

That is, a good deal of the insurance that is bought in large cities has practically no value as conflagration indemnity. And yet in the case of ordinary fires it gives fairly good protection.

The actual state of affairs in a city like New York is that there is not enough first-class insurance to meet the demand and

policy-holders must take a certain amount of inferior insurance, which will be almost valueless in a conflagration, for the sake of the protection that it will give in ordinary fires.

In the face then of this very serious conflagration hazard, and since it is probably impracticable to attempt to bring the companies to a uniform standard of potential solvency, it is unquestionably desirable that the State should be able to place before the policy-holder the facts upon which he can intelligently make his choice of companies.

For this purpose it is necessary and sufficient for the State to require from each company a statement of its amount at risk, both gross and net, in the conflagration districts of say the twenty largest cities in this country, such conflagration districts to be designated by the Superintendent after an examination from time to time of the conditions in each city.

The Safety Fund Law.

Shortly after the great Chicago fire a law was passed in this state, and similar laws in several other states, which was designed to meet the situation arising after a great conflagration. The insurance condition after a serious conflagration is very critical; most of the surplus of even the strongest companies has disappeared, other companies are insolvent or impaired and the possible indemnity in case of another serious fire is at a very low point. In a consideration of conflagrations it is quite as important to think of the subsequent impairment of future indemnity and its effect upon credit, as of the claims of the policy-holders who have suffered loss.

It was with this in mind that the so-called "safety-fund" law was passed which in brief allows a company of this state to set aside a fund called a Special Reserve Fund, provided at least as much more is set aside for general surplus; in case of a conflagration in which the claims upon the company exceed the amount of the capital and general surplus, the company is allowed to hold this special reserve fund, together with the unearned premium reserve, free from the claims of the burned policy-holders, for the benefit of the unburned policy-holders. The capital and general

surplus go to the policy-holders who have suffered loss; they get this and this only, and have no further recourse to the company.

The purpose of the law is excellent, namely, to save the company's plant, and so to encourage the supply of indemnity in the very critical situation that follows a conflagration. To plunge a company into insolvency and so destroy its plant is an economic loss. The withdrawal of part of the surplus in a special reserve fund cannot be criticised in view of the fact that the size of the surplus is a matter that, in any case, is at the discretion of the company.

The effect of the law, however, is to turn over the whole of the unearned premium reserve to the unburned policy-holders and so in effect to make them preferred creditors. The unearned premium reserve is to be sure the part of the funds of the company that is reserved for the unburned policy-holder's special benefit, and, strictly, the surplus is that part of the funds that is applicable to conflagration liability, and yet there is considerable to be said, in case somebody must lose money, for the greater urgency of the claims of the burned policy-holders; for, whatever the claims of equity may be, the moral claims of the burned policy-holders are the stronger because of their greater needs.

A law has been recently passed in Massachusetts which in effect denies to the unburned policy-holder the position of preferred creditor.

The whole question is simply another outcropping of the fact that the conflagration hazard does not properly belong in insurance and cannot be dealt with wholly rationally. It is inevitable that a conflagration, even with all the resources of the insurance companies, should produce serious financial disturbance.

The safety-fund law is another instance of the numerous features of insurance which must be understood if the policy-holder is to be in a position to act intelligently. In effect what must be borne in mind is that the effective strength of a safety-fund company in a severe conflagration is its capital and surplus less its special reserve.

There is this to be said, however, that as a practical matter the safety-fund law would not be taken advantage of except in a very severe conflagration. It would be only when the companies that

were not operating under this law were very seriously involved that the safety-fund companies could afford, for competitive reasons, to take advantage of it. Only one company took advantage of the law in its San Francisco settlements.

The Regulation of Rates by Competition.

So far only one open avenue for competition in fire insurance has been noticed. Competition in rates and commissions has been closed by combination, competition in policy forms has been closed by the standardization of policies. There is only a competition in strength and it is seen that, to open the way fully to the operation of this form of competition, steps must be taken to let the policy-holder see clearly what the strength of the company is.

It has been urged, however, in this report, that competition, with the help of publicity, was sufficient to keep rates reasonable. If this is so competition must still have some power. It is true to be sure that perfectly free competition in rates has been largely closed, and it is believed that this is unquestionably for the public good, but competition can and does regulate rates through the medium of the rating organizations.

If a rate is too high there is pressure brought by the companies upon the rating organization to reduce the rate as a basis for securing business, that is, there is a competition among the companies to obtain the favor of the insured by securing for him a reduction in rate. Furthermore, there is the competition of mutual and non-Board companies and the threatened competition of other companies that will be organized if the rate becomes too high.

Mutual Insurance.

It is believed that there is enough competition here to keep rates from becoming excessive, but it is important that this beneficial and regulative form of competition should be retained and increased if possible. This can be done, for instance, by opening the way to a free competition by the factory mutuals and the miscellaneous mutuals which have in Massachusetts so well justified their existence. Such companies can unquestionably, if they receive proper supervision, exert a very wholesome influence in the

direction of economy and the prevention of fire. There is neither the tendency on the one hand to reduce rates below cost nor, on the others, to pay excessive commissions—the mill mutuals in fact pay no commissions.

There are dangers in the mutual system if the organization and operation of such companies are not closely watched, but it is believed that this can be provided for.

An objection to mutual companies that is often made, and made in such a way as to exalt the stock companies, is that mutual companies cannot assume their share of the conflagration hazard, and that, therefore, this burden and the burden of other classes which the mutuals will not write, is left upon the shoulders of the stock companies.

It is perfectly true that mutual companies cannot in general handle the conflagration hazard but it is forcing the matter into the field of sentiment to find anything in the situation that is either to the discredit of the mutual companies, or to the credit of the stock companies. It is simply a statement of fact that the mutual system can operate successfully only where there is no conflagration hazard, and that if the conflagration hazard is to be assumed at all that the stock companies must do it. But this works itself out in a purely economic way. It is not to the credit of the stock companies to assume a conflagration hazard that is beyond their power and that they are not adequately paid for; and if they do so it is not due to sentiment, but because they yield to business pressure. If there is a field that mutual companies can occupy more acceptably than stock companies, even though by doing so they take the cream of the business, they should be allowed to occupy it. It is not necessary to offer a subsidy to the stock companies for undertaking the conflagration hazard; if it is underpaid let them collect more premiums:

Factory Mutual Insurance.

The first so-called Factory Mutual Insurance Company was formed in 1835 in Rhode Island and grew out of the fact that the stock companies at that time made no concession in rate for fire-protective features. The members were mostly owners of woolen

and cotton mills. Since that time twenty or more such companies have been organized, mostly in Massachusetts, Rhode Island and Pennsylvania. They have risks aggregating something over two billion dollars. These companies co-operate with each other in the distribution of risks and on inspections; they are grouped, largely according to size, into what are called the Senior Conference and the Junior Conference. These companies which began by writing mostly woolen and cotton mills have broadened their field to factories in general.

From the very first they have been able to make better* rates to their members than the stock companies, for they have always interested themselves in protection and prevention. In 1875 the automatic sprinkler was invented. This was unquestionably the greatest step that has ever been made in the subject of fire prevention. The automatic sprinkler consists in a sprinkler-head suspended from the ceiling and connected under pressure with a source of water; the opening in the head is sealed with a soft solder that melts at a comparatively low temperature. These sprinklers are scattered at regular or irregular intervals throughout the building which is to be protected. When a fire starts the heat melts the solder on one or more of the sprinklers in the immediate vicinity of the fire, the water is released and is thus automatically applied at the point where it is most needed. The result is that in a very large proportion of cases the fire is extinguished, often in the absence of any person, before it has done much damage. The great value of the sprinkler lies in the fact that it is automatic, ever-ready and applies the water at the exact spot where it is most needed.

The sprinkler soon after its invention was investigated by Mr. Edward Atkinson, who at that time, as president of the Boston Manufacturers' Mutual Fire Insurance Company, and until his death was the most untiring advocate of fire prevention. The introduction of the sprinkler was slow, owing to the fact that it was largely untried, that the cost of installation was large and that its use was discouraged by the stock companies. It was not long,

* The stock companies now, through the Factory Insurance Association practically meet the rates of the mutual companies.

however, before the sprinkler demonstrated its value, and to-day a sprinkler equipment is in general required before a factory mutual company will go on a risk. The work of the factory mutuals consists very largely in standardization and inspection, the emphasis being on the *prevention* of loss rather than on insurance proper. The first step that is taken by a mutual company on receiving an application for insurance is to make a thorough survey of the property and to draw up a detailed plan for changes in construction, the installation of a sprinkler equipment or a pumping station or such other features as may be thought necessary by the company before they will accept a risk. When the risk is accepted the insurance is apportioned among the different companies largely in proportion to their size.

The companies unite in a very thorough inspection work. Every factory is carefully examined by experts at least four times a year and the results, with suggestions for improvement, are sent both to the companies and to the owner. If the inspections show continued poor conditions, the insurance is cancelled. The results of this system are little short of marvelous. Factories are, of course, in themselves one of the most hazardous classes. The rate of the stock companies on woolen mills, when the first factory mutual company was organized, was between one and two dollars a hundred. The net rate now in the best mutual companies is about four cents.

It is impossible to go further into the details of this most interesting work. But it should be clearly recognized that to the mill mutuals belongs most of the credit for the inception of what is being done to-day toward the prevention of fire. The stock companies are now thoroughly committed to this work themselves, but they have been largely driven into it by the competition and example of the factory mutuals.

The premium plan of these companies is as follows: risks are graded by percentages, that is, the rate is seventy cents, eighty cents or some other multiple of five; as a matter of fact, the standardization is so complete that there are no great differences in rate. The average rate in the larger companies is about seventy-five cents; this premium is paid at the beginning of the year; at the

end of the year the part of the premium that has not been used is returned. This return premium is based upon the experience of the company on the whole of its business. For some years it has remained very steadily near 94 per cent.

Beside this gross premium, only 6 per cent. of which is in general necessary, the policy-holders bind themselves to pay an assessment, if necessary, of five times the gross premiums. No company in the last sixty years has found it necessary to call for an assessment. This in itself is very good evidence of the strength of the factory mutual system.

In a statistical analysis the ratio of assets to amount at risk comes out somewhat smaller for the largest mutual companies than for the largest stock companies, not including, however, in the assets of the mutual companies the potential strength of the assessment; but the risks of the stock companies are so much more hazardous than those of the mutual companies that the ratio of assets to losses is thirteen times as great for the mutual companies as for the stock companies. Considering in addition the fact that the factory mutual companies do not write where there is a serious conflagration hazard, it would seem as though they were abundantly strong.

It has already been said that the competition of the factory mutuals has been largely met by the stock companies through the medium of the Factory Insurance Association. Stock insurance appeals more strongly to some owners of factories, particularly those who wish to be entirely relieved of the possibility of assessment and those who would be embarrassed by maintaining so large a deposit. The stock companies offer on such risks the same rate as the net rate of the mutual companies when the interest is taken into account on the amount on deposit; for example:

Gross mutual rate	$0 75
Return premium (94 per cent.)	.705
Net rate	.045
Add 4 per cent. interest on the gross premium on deposit	.03
Effective mutual rate	.075

The expense of doing the business of factory mutual insurance is much less than the cost of doing the business in stock insurance. Stock insurance costs about forty cents per $100 of insurance written, and factory mutual insurance about four cents* per $100 of insurance written.

The expense ratio for factory mutual insurance is, however, greater, when figured on the net premium than for stock companies; more money is spent on expense than on losses. This is natural and right; it shows only the emphasis that is being put upon the protective side of the business.

These companies are not admitted to do business in this state, but the fact is that they issue policies covering property located therein in enormous amounts in the aggregate. This they do by writing the policies and issuing them at their home offices in their home states and mailing them to the policy-holder whose property is insured. In this way they avoid sections 49 and 50 of the Insurance Law by making the contract in the foreign jurisdiction where the New York statute does not and cannot apply.

It is quite apparent, however, that as the term "agent" is defined in section 49 of the law that the inspectors and surveyors of such companies violate the law, because when they, in the course of their duties, inspect or survey a plant before the insurance is written, or after it is written, with the purpose of informing the company, of the character and condition of the risk, they fall within the definition as a "surveyor or any other person who shall in any manner *aid* in transacting the insurance business," in which the company is engaged. Officers of the stock companies also freely assert that the competition between themselves and these factory mutuals is severe as the good risks of the kind which the mutuals will take are actively and persistently solicited. Nor do the officers of the mutuals strenuously deny the allegation.

The reason for the situation is easily discerned for it is apparent that the law could be rigidly enforced only by keeping a large force of detectives at work to shadow the inspectors and surveyors. As the insurance furnished is of the best and as the

* It is only fair to say however that the Factory Insurance Association has reduced its expense to about the same figure.

factory-owners in the state want the insurance, there is no public sentiment in favor of the enforcement of the law and so it remains practically a dead letter. One result of this is that the state is losing revenue, for the reason that when insurance is placed with these companies, the stock companies which pay taxes to the state lose the business; the state moreover is losing the wholesome effect of legalized competition.

Officers of the factory mutuals have testified before the Committee in behalf of the companies they represent and in behalf of the other mutuals that if it were not for the inconvenience which the present law would subject them to they would apply to the Superintendent of Insurance for a certificate of authority.

Objection is made to the present requirement of the law as to a deposit in the home state of at least $200,000, on the ground that since the companies are mutual, such a tying-up of funds is opposed to the theory of insurance upon which they are working. Further that the provisions of the present law requiring the premiums by fire districts are onerous.

The Committee believes that every reasonable effort should be made to induce these companies to enter the state of New York, as duly authorized companies and that therefore the law should be so amended as to attract them to come here and pay to this state the taxes they now pay to their home states on the business done here. Furthermore, it is believed that the state itself is more in need of additional revenue at the present time than the Volunteer Fire Departments, so that the tax should not be given wholly to such organizations as the present law provides. The fact is that the risks incurred by these companies are the least likely to burn because of the precautionary measures which are taken to protect them, so that the work of the fire departments is not increased by the presence of such risks. It seems to the Committee that a fair way to dispose of this question and to do equity to the volunteer firemen is to provide that 10 per cent. shall go to the Firemen's Home at Hudson, and that the balance shall go directly into the state treasury. As it is now neither the firemen nor their home at Hudson nor the state receives any tax. It is much better for the state and Home to get it than to have it go to foreign states.

The Miscellaneous Mutuals.

Beside the mill mutuals there is a class of companies which do a miscellaneous, but largely dwelling-house business. These are often called the miscellaneous mutuals. New England and particularly Massachusetts has been the part of the country which has taken most kindly to this form of insurance, and here many such companies have had a long and honorable life. In general these companies collect a premium from one to one and a half times as large as the premium of the stock companies on the same class of business, but at the expiration of the policy they return part of the premium; this brings the price of the mutual insurance down in general to about 75 per cent. of the stock premium. The policyholders under this contract are liable for an extra assessment equal to the full premium already subscribed.

These companies write conservatively in large cities. A number of the companies were involved in the Boston fire in 1871 and went through the experience much more creditably than the local stock companies.

The expense ratio of the miscellaneous companies is in general about 5 per cent. less than that of the stock companies.

A number of these companies desire to broaden their field of operation so that they may obtain a larger basis of average in case of conflagration. Under proper restrictions, they should be encouraged to enter.

Lloyds.

The Lloyds are associations of individual underwriters. The name covers organizations of all degrees of looseness or closeness of association and all degrees of responsibility. The experience with organizations which went under the name of Lloyds in this state has been so unfortunate that in 1892 a law was passed prohibiting the formation of new associations and in 1910 the Lloyds were brought more closely under the control of the Insurance Department. The Lloyds which are authorized in this state transact business in much the same way as the stock companies.

There are besides these, however, a number of foreign Lloyds. These are not allowed to employ agents in this state to solicit business. It is stated, however, that much business finds its way abroad and that the foreign Lloyds write much insurance

in this market and much bitter complaint has been made to your Committee because of this fact.

It is very difficult to see just how the State can prevent its citizens, if they will, from making a contract in a foreign state or land concerning their property wherever it may be. The government that gives mercantile and other organizations their life might compel them to buy insurance only in this state; the wisdom of even that limitation could be questioned, but it is quite certain that the State cannot — and observe the Constitution, —prevent its citizens from making contracts where they will— and of course, the procuring of insurance is the making of a contract.

The Insurance Law now prohibits these foreign Lloyds from writing business in this state; it also prohibits any unauthorized corporation from so doing.

The law now makes provisions for the procuring of surplus line insurance when the same cannot be placed with the authorized companies. An agent is licensed especially to procure this insurance as the agent of the insured. He can place this where he will, provided he and the insured make affidavit that it could not be procured with authorized companies. The statement is made that a good deal of insurance, not surplus line, goes to foreign companies and Lloyds. The remedy for present evils is to enforce the laws already on the books. The Committee fails to see how more law on the subject can help the situation.

There seems to be confusion as to whether the licensed agent can issue or countersign policies for the unauthorized company in these pure surplus line cases. It is claimed that companies are actually and in violation of law issuing such insurance from offices located in New York state. The apparent intent of the law is to permit the issuance of surplus line policies in this state in the special cases mentioned.

The Committee believes the matter should be made perfectly clear by an amendment to the licensed agents' section, so that this surplus line insurance could be written by such agents in this state. Then it may be easier to enforce the other prohibitory sections of the law, as no one not licensed could have even the shadow of an excuse for writing *any* kind of insurance without an express certificate of authority.

Inter-Insurance Associations.

A plan of insurance which in many respects resembles that of the mill mutuals, and in some particulars that of the Lloyds, is furnished by what are called inter-insurance associations or simply inter-insurers.

These are groups of individuals who act to insure each other, that is, they act both as insurer and insured. There are now recognized in this state three of such organizations but there are many more in the country at large. The class of property for which the system was originated and in which the insurance is mainly done is the class of mercantile buildings and stocks.

It is very difficult to procure enough insurance in large cities on the class of mercantile stocks. This led to the banding together of a few merchants to insure each other; the association grew until it embraced several hundred merchants in a large number of cities. Each member of the group who wishes to have his own risk insured must bind himself as an insurer up to a certain fixed limit. Each subscriber is put upon each risk that is written after he enters the association and he is debited and credited with his earnings and losses on each risk. The stock premiums are charged and the earnings amount to a return of a part of the premium. The return is very properly not exactly proportional to the premiums as it is in the case of the mill mutuals.

In general, inter-insurance associations confine themselves to high-grade, well-equipped, sprinklered risks and maintain an inspection department of much the same character as the mill mutuals. This form of insurance is certainly very successful under ordinary conditions but there is some question how successfully such associations could stand the strain of a severe conflagration.

The door is at present shut to those who would organize more of these associations as well as to responsible foreign associations of this character that wish to do business here. Your Committee believes that under proper restrictions, there is no reason why persons who desire to enter the insurance business, either as members of Lloyds, or as inter-insurers, associated with others, similarly obligated, should not be permitted to do so. Further, the evidence shows that there are individuals so associated in

business, domiciled in other states, whose strength is unquestioned and who have accumulated not only an unearned premium reserve upon business done by them elsewhere, but have a guarantee fund deposited in addition to the individual liability of each of the underwriters; your Committee believes that such responsible bodies should be permitted to do business in this state under proper restrictions and that their presence here would aid the general public in securing safe insurance at proper rates.

Domestic Mutuals.

Mutual companies may be organized in this state under the present law, which, however, has not to any considerable extent been taken advantage of; nor has your Committee's attention been called to any extended demand for a revision of this law. The only evidence on this subject before your Committee was from a witness who advocated a change in the law which seemed more in the interest of promoters of companies than for the good of the public.

The state has already provided in article 9 of the Insurance Law an excellent system of mutual insurance for the smaller towns and communities where the conflagration hazard is substantially absent. These county and town co-operative companies have just recently (1910) been brought within the purview of the Insurance Department and their powers and duties have been carefully defined, and it is to be expected that under careful supervision the usefulness of these organizations will increase.

What seemed a hardship on one of these companies whose record is excellent was brought to the attention of the Committee. The operation of the new statute will have the effect of making it reduce its insurance in a line (mercantile and country hotel risks) where its experience has been very favorable. A recommendation for amendment to the law was suggested by this company so that the insurance issued by it and others in a similar situation prior to 1910 could be continued. Inasmuch as it issued no policy in excess of $4,000, even in the line prohibited, the Committee believes the exception can safely be made and not impair the efficiency of the law or endanger the class of companies to which it belongs.

Fire Prevention.

Important as it is to have equitable rates in fire insurance and important as it is that the expense of the business should be kept within reasonable limits, so far as practical results are concerned, the problem of fire-waste is immensely more important. On the whole, rates in fire insurance are fairly equitable, probably more so than railroad rates, for instance, and the tendency is strongly toward still greater equity. So far as expense is concerned it is impossible to be very hopeful of much reduction; no one believes that it could be more than a few million dollars a year. Against that we have the certainty that the fire-loss could be at least cut in two, that there could not only be a saving of $100,000,000 a year in property now destroyed, but nearly as much more in insurance expense, certainly hundreds, perhaps thousands of lives saved and a world of worry and suffering.

The fire-loss of this country averages nearly two hundred and fifty millions a year and is increasing; this is about $30,000 an hour or $500 a minute, year in and year out. To this must be added at least the same additional amount for the maintenance of fire departments and nearly as much more for the expense of conducting the insurance business; altogether in the neighborhood of $750,000,000 a year of expenditure because of destructive fires. That is, fire costs us directly and indirectly each year more than the value of the cotton crop, and not only that but along with this economic loss goes a frightful and horrible loss of life.

All this would not be so bad if it were not so preventable. In Europe the per capita loss is only one-seventh of what it is in this country and in some parts of Europe far less than that. It is stated that in the city of Vienna a fire has never been known to get beyond the building in which it originated, and this is in spite of the fact that the fire departments of European cities are far less efficient than those of this country.

The cause for this is partly climatic; not only do our hot summers make everything as dry as tinder, but our cold winters necessitate artificial heat, and heating apparatus alone is responsible for a large proportion of all fires. A still more fundamental cause for this difference lies, however, in the temperament of the American people and the conditions of life in this country.

This is a new and largely undeveloped country, and the resources have seemed illimitable. In our eagerness to reach results we have not had the patience to build carefully; so plentiful was lumber that it was easier to build and burn and build again than to build substantially at first. Besides that conditions have changed so rapidly that often in a few years buildings must needs be torn down that their places may be taken by others more suitable to changed conditions. Then, explain it as you will, the intensity of life is far greater in this country than in Europe, more living is crowded into the same time. But you cannot accelerate processes without increasing hazard; we have no time to see that matches are out, everything is run under forced draught. The fire loss is only one indication of the wastefulness of our life; we have wasted our forests, our soil, our mines, our water.

There are various indications, however, that we are coming to the time when we must stop this prodigal waste. The drain upon our resources is beginning to show itself in the increased cost of living.

It is impossible to spend directly and indirectly on the luxury of fires each year the amount of $750,000,000 and not have to give up other luxuries; it is impossible to employ 500,000 men, representing a population equal to that of Chicago, in building, in insurance, in fire departments, who might otherwise be creating wealth, and not feel the strain of their support.

The movement for conservation is becoming stronger every day and will continue to do so as the need increases and the people realize more thoroughly the enormity of what they are doing. In the case of fire the matter is so perfectly possible of control! Even with our present poor construction the fire-waste could be enormously reduced by such simple means as the clearing up of rubbish, the use of safety matches, reasonable care with heating apparatus, the proper disposition of ashes.

It is too much to expect a whole people suddenly to amend its life and pay attention to these things, but the cost of an inspection service which would compel some of these simple precautions would be trifling compared with the good it would do; it has been suggested that the employees of the fire department could be utilized in such work and so become still more familiar with local conditions.

But when we turn now to larger matters, better construction and equipment, we are met by the astonishing fact that the cost of such changes bears no comparison with the saving that would be effected. The equipment that the factory mutuals demand is most elaborate — often a private pumping station, large private water mains, water tanks, fire-stops, sprinkler equipment, automatic alarms — and yet it is the common experience that the cost of all these will be made up in two or three years' savings in premiums. An investment that would be replaced by three years' premiums has an earning power of 50 per cent. per year. Even if it took five years' savings on premiums to pay for increased cost of construction and equipment, such investment would be yielding 25 per cent. and similarly an expense that took ten years to replace would be earning 11 per cent. That is, a man who refuses to spend $1,000 on better construction or equipment when he could thereby save $200 a year on his insurance premiums is refusing an investment that would pay (that is save) him 25 per cent. a year.

That is, the saving in insurance premiums alone will yield a large earning on the cost of better construction and equipment, but to this must be added all the advantages that are attendant upon uninterrupted conditions, the saving in worry, the greater safety of life, the greater stability of economic conditions.

The accomplishments in this line are most spectacular in the case of factory mutuals and the factory insurance associations. Manufacturers are keen students of expense and efficiency and if fire prevention has appealed to them as a good investment the public may well follow their lead.

Good construction is the basis for fire prevention; but new buildings form only a small part of a city and it is years before their effect will be greatly felt. To a city as a whole, therefore, good construction avails mostly for the future.

The conflagration hazard in New York is due mostly to the thousands of old buildings, built in the days when neither steam nor electricity nor gas were important features of the hazard. They are not adapted to modern conditions. There are then a great number of buildings that will burn if a fire starts and the practical problem is either to prevent the fire from starting or to prevent it from getting a headway. Here is one field for the

automatic sprinkler. Its use should unquestionably be extended. It is even desirable that the installation of sprinklers in certain classes of buildings, in basements perhaps, in schoolhouses, in crowded city factories should be made compulsory.

There will always be a fire hazard on stocks of merchandise, and in general on contents of buildings, however good the buildings themselves are. Here also, therefore, the automatic sprinkler has a tremendous field of usefulness.

The most hopeful lines along which this problem of waste may be attacked are first, the awakening of people to a sense of the waste and shame and horror of fire, and an education in what should be done to improve conditions. A number of fire marshals in different states have undertaken this work of education; some good literature of this kind has been issued in Ohio, for instance; in Nebraska one day a year is set aside in the schools as fire day, on which the pupils receive special instruction and demonstration concerning fire, and a text-book has been prepared for use in the schools of the state.

The National Board of Fire Underwriters and the National Fire Protection Association are both engaged in educational work and will be glad to co-operate with individuals or associations or committees who wish to give this matter attention.

The second way to work for improved conditions is through the creation of the office of Fire Marshal. It should be the duty of the fire marshal to investigate and make a record of every fire, and this record should include the cause of the fire, in order that it may serve as a basis for a study of the fire hazard.

It would be desirable (but possibly at present impracticable) if every person upon whose premises a fire starts should be required to go on his own initiative and report the fire and the circumstances to the fire marshal. This in itself would go far to reduce the number of incendiary fires. The fire marshal should also maintain an inspection bureau whose duty it should be to see that premises were kept in good order and that in general strict fire preventive conditions were maintained. It might well be provided further that no insurance company should pay a loss until authorized by the fire marshal, or at any rate that the fire marshal should have the right to order payment stopped in suspicious cases pending an investigation.

A third method of improving conditions is through better building laws. The importance of fire-prevention, even from a purely financial point of view, should be brought to the attention of municipal officers, and a stringent building code enacted. This should not only be done by cities but by states as well.

Several years ago a Model Building Code was prepared by the National Board of Fire Underwriters and sent out to city officials all over the country. A number of cities have adopted this code in full or in part. A new edition is being printed and the National Board has made plans to give expert advice to those who wish to interest themselves in this matter.

Other Matters.

Evidence was presented to the Committee against a large corporation, whose principal business is the loaning of money on bond and mortgage, to the effect that in making its contracts to loan money on buildings it refused to accept insurance as an additional collateral to the mortgage with those certain fire companies, no matter how good their financial stability, which refused to purchase bonds of another corporation closely allied with the one in question. While this practice does not commend itself to the Committee as being altogether admirable or particularly broad-gauged, still it cannot conclude that it evidenced any inherent vice. A man or a corporation in the business of loaning money on bond and mortgage should continue to have the right to name his collateral, and to state the conditions under which the loan will be made or continued.

It would be dangerous intermeddling with business affairs to attempt to lay down in a statute what collateral should be accepted by the lender. If any illegal conspiracy exists between corporations or individuals to injure another corporation or person the law now provides ample relief. The evidence, however, does not convince your Committee that legislation to prevent the alleged acts of the corporation in question is desirable.

PART III.

Recommendations.

The foregoing discussion has outlined in detail the Committee's views upon the many branches of this important subject. Its conclusions have been stated in general terms. It now remains to state specifically what is recommended to the Legislature for action. Your Committee realizes fully that there will always be conflicting views on what ought to be done in reference to a subject so vast and so full of vital interest to the people, and concerning which there are so many complications. With an endeavor, however, to act in a spirit of absolute fairness to all parties in interest, having in mind on the one hand that the large and substantial organizations which have been furnishing indemnity to the public are entitled to have their case weighed conservatively, and on the other hand that the people who pay the premiums are entitled to equal consideration, the Committee recommends on the various questions involved in this inquiry, as follows:

Valued Policy.

As to a valued policy law: that the Legislature resolutely refuse to countenance this species of insurance heresy. In principle it violates the fundamental idea of insurance — indemnity, it tends to place a premium on arson and unnecessarily puts temptation in the way of the insured when prosperity fails. Nowhere does such a law seem to have any good effect and the consensus of opinion among insurance men and laymen is that it is dangerous legislation.

Coinsurance.

Your Committee recognizes the coinsurance clause as a valuable basis for equitable rating and recommends that its use be permitted. Your Committee recommends to the companies that they use all means in their power when a coinsurance clause is attached to a policy to make clear to the insured, first, that his policy contains such a provision, and, second, what it means.

Anti-compact and Rating Exchanges.

As to the so-called anti-compact law: for the many reasons given, your Committee believes that it would be most unfortunate

for the public if a condition of open competition in rates were forced by the State. The safe policy to follow in treating this subject is to recognize the good which flows from combination well regulated; to permit the companies to use rating associations and bureaus to develop the principle of schedule rating and to spread the cost of determining proper rates among the companies, and to permit them to agree to maintain those rates.

It is therefore recommended that no anti-compact bill be passed, but that in place thereof a statute be enacted that will permit combination under State regulation, such regulation to stop short of actually fixing the price at which the companies shall sell their insurance, but which shall be of such a positive nature that all forms of discrimination in rates will cease; such statute to provide for the filing by such associations and bureaus of all schedules and specific rates with the Insurance Department, and also that all such associations and bureaus shall be subject to the closest supervision by the Superintendent of Insurance, and further that all such associations and bureaus shall keep careful records of their proceedings, and provide for the hearing of interested property-owners who feel aggrieved at the rates charged,— all to the end that the potent power of publicity may operate freely to cure any arbitrary action or indefensible methods.

And such statute should also provide that while companies may maintain proper rate-making associations and exchanges and agree to maintain the rates so made, they must not seek to strengthen their own agreement by forcing third persons to help them do so.

In other words the licensing of and control over brokers should cease, and the present situation wherein rate-making exchanges and associations wield a power which properly belongs to government should be ended. As before indicated, the Committee's judgment is that the companies have made out a case to justify their joint action in the making of rates, but they have not shown that they should be permitted to coerce a large body of several thousand men, who are making their living by bringing business to the companies, into helping to maintain rates for the companies.

The companies should depend upon their own business integrity in the carrying out of their agreement. They should not be

permitted to remove temptation from themselves and shift the responsibility of maintaining rates to the shoulders of men who have had nothing to do with making them. The good which flows from the conditions that the exchanges now demand of the brokers concerning the giving of rebates can be preserved in a statute on that subject.

State License Law.

Inasmuch as one important reason for the licensing of brokers by the companies was to exclude untrustworthy persons from the fire insurance field, it is deemed desirable that such legislation be enacted as will carry out this idea; that no person shall be permitted to sell or to procure fire insurance, either as an agent or broker, until he shall have a certificate from the state of New York giving him the proper authority so to do.

The state has already successfully dealt with this subject as it affects life insurance and the Committee believes that a substantially similar statute should be enacted to govern similar conditions in fire insurance. Therefore it is recommended that a law be passed placing with the Superintendent of Insurance the responsibility and the duty of issuing certificates of authority to those persons who are trustworthy and competent to transact this business, and providing that such certificates of authority when issued shall be revoked upon its appearing to the Superintendent that the holders thereof have violated the law or have become untrustworthy, or have demonstrated their incompetency.

As to the suggestion which has been frequently made that agents and brokers should be licensed only after an examination in which they have demonstrated their fitness, the Committee feels that such a system would necessarily involve the creation of new offices, or at least of a board of State examiners, at considerable expense, and that therefore the whole matter could better be left with the Superintendent of Insurance to work out, giving him a wide discretion, which will allow him to use all means to gain knowledge about applicants for certificates which are available to him or his corps of assistants. If he determines that a convenient way to determine competency is by a written examination his Department examiners may prepare and conduct such examination as may be necessary.

Anti-Rebate Law.

Along with an act pertaining to the licensing of agents and brokers, and as a proper restriction upon the manner in which such persons should conduct the business of fire insurance, should be enacted a law which prevents rebating in all its forms,— this for the reason that rebates in any form unsettle the business and lead to unfair discrimination between individuals.

Conflagration Hazard.

Your Committee is not prepared to recommend that the State interfere with the companies in the conduct of their business to the extent of fixing the limit of insurance which can be written by the various companies in districts in which insurable values are congested. It does feel, however, that the insuring public is entitled to full and exact knowledge on the subject which will throw light upon the conditions of the various companies and the manner in which their underwriting is carried on. Therefore, it recommends, in addition to the information now set forth to the Superintendent of Insurance in the annual statement of companies, that the amounts at risk in the congested value districts in large cities be shown therein and be made a matter of public record.

In fairness to the companies, however, the law should permit them to state how much of such contingent liability is reinsured in other authorized companies and how much in unauthorized companies. The duty of fixing the boundaries of the congested value districts should be left by the statute with the Superintendent of Insurance so that he can upon conference with the underwriters determine the question fairly and from time to time make such changes therein as may prove necessary.

Mutual Companies.

It seems highly desirable that as many solvent, well-organized and well-conducted companies should be admitted to this state as desire to do business here. The more responsible companies there are to do such business the better will the fire loss be distributed and the more equitable will rates become. It is recommended that the law pertaining to the admission of mutual companies of other states be so amended as to make possible the admission, always subject to the approval of the Superintendent of

Insurance, of such organizations as the New England Factory Mutual Companies, and also a large number of miscellaneous mutual companies of other states of proven worth; this can be done by removing the requirement of the law as to a deposit in the home state.

To insure the entry of responsible companies only, however, such law should require any mutual company which desired admission to comply with certain specific conditions that would guarantee solvency.

Lloyds and Inter-Insurers.

For the reasons already expressed your Committee believes that the organization of more responsible Lloyds and inter-insurance associations would be for the benefit of the insuring public. Therefore it recommends that the law be amended by the insertion of two new sections in article 10 of the Insurance Law which shall provide for the organization and supervision of such associations, requiring in addition to the unearned premium fund on all policies in force that each such association hereafter formed be possessed of a guaranty fund of at least $200,000 over and above all liabilities. Such a law while permitting new Lloyds and inter-insurance associations to be organized, will adequately protect the public in its dealings with them. It also recommends that the law be so amended as to permit the admission into this State of such thoroughly responsible Lloyds and inter-insurance associations of other states as may be, under proper restrictions, authorized by the Superintendent of Insurance.

Standard Policy.

No change in the standard form of fire insurance policy is recommended. On account, however, of the expressed desire upon the part of a number of companies to change some of the provisions, agreements and conditions which are now permitted to be indorsed upon such policies, it seems desirable that such changes should be made as are in the interests of the insured and as may meet the approval of the Superintendent of Insurance. Therefore, it is recommended that the companies be permitted during the current year to submit to the Superintendent for his approval such changes in these conditions as they may wish to make.

Amendments Affecting County and Town Co-operative Insurance Companies.

It is recommended that an amendment be made to the Insurance Law permitting such companies as were insuring mercantile, manufacturing and country hotel risks prior to July 1, 1910, when article 9 of the Insurance Law took effect to continue the writing of such risks in amounts not exceeding $4,000.

Surplus Lines.

It is recommended that section 137 of the Insurance Law be amended so as to permit agents now licensed under that section of the law to issue and countersign policies of insurance to cover only surplus line risks, providing that such policies contain a provision that the agent issuing the policy shall be the agent upon whom service of process in this state can be made. The law, however, should not be changed so as to prevent such a licensed agent from *procuring* surplus line insurance as he may now do under the provisions of the section. The amendment should relate only to the issuing and countersigning of policies within this State.

State Fire Marshal Law.

Your Committee believes that at the root of the whole question of fire insurance is the consideration of fire prevention and that all means possible should be taken by the State to prevent fire waste. Therefore, it recommends the enactment of a State Fire Marshal Law to the end that better conditions may prevail. Such a statute has been prepared and it has been the aim of your Committee to embody therein the strongest points of similar laws of other states, as well as such additional suggestions which seemed of value as have been made in the course of the inquiry.

Classification of Loss Experience.

In view of the apparent difficulty which would attend the classification of the loss experience of the various companies if each state required the classification to be kept differently for each, it is not recommended that companies at present be required to keep and report their loss experience according to a common

plan. Your Committee believes, however, that if the companies and the various Commissioners of Insurance of the different states should agree upon such a common plan which all companies doing business in this country could and would follow, that a great step toward reducing the business to a scientific basis would have been taken. It therefore recommends to the Superintendent of Insurance that he take up this question with the Commissioners of other states and with the companies, in an endeavor to work out a practical plan which will eventually result in producing a classification of loss experience of such an extent and volume as will furnish a basis upon which the true burning-ratio in the various classes of risks throughout the country can be determined.

Building Codes.

The value of better building codes and their rigid enforcement is acknowledged. Without specifically recommending a statute upon the subject, the Committee makes the recommendation to the Legislature that it frame and enact a comprehensive State Building Law, the principles of which shall be observed in the building codes of the various municipalities in the state and which will apply uniformly. The National and New York Boards of Fire Underwriters and the National Fire Protection Association will doubtless co-operate in the framing of such a statute and the Committee commends them to the Legislature for the useful work they have already done along this line.

Bills carrying into effect the recommendations herein made are submitted herewith.

All of which is respectfully submitted.

Dated, February 1, 1911.

On behalf of the Senate,

ALEX. BROUGH,
VICTOR M. ALLEN.

On behalf of the Assembly,

EDWIN A. MERRITT, Jr.
WM. W. COLNE,
FRED'K R. TOOMBS,
FRANK F. YOUNG.

As to that part of this report which deals with the subject of corruption and corrupt practices and contains the findings upon the testimony taken, we make no comment, except to say that we were not informed by counsel for the Committee during the course of its investigation of any matters tending to show corruption which came to the notice of counsel. The only knowledge we had was that disclosed as the testimony was given from day to day at the public hearings.

We concur, however, in the recommendation proposing the enactment of a statute intended to promptly expose the offer of a bribe.

We concur in the findings and recommendations relating to the subject of fire insurance. As to the findings and recommendations concerning the methods of the various fire insurance exchanges and other rate-making bodies throughout the state we concur in the recommendation requiring the filing of rates and schedules with the Superintendent of Insurance and believe that such publicity will be beneficial. We think, however, that this in itself will not bring about the object desired, namely, the maintenance of equitable and just rates. Inasmuch as fire insurance is so vital and necessary and of such vast importance affecting as it does the entire business interests of the state, we make the further recommendation that some supervision be had over the rate-making bodies, which the testimony disclosed are in the nature of monopolies and from whose decisions there is no appeal by the assured.

We propose that a bureau be created in the office of the state Superintendent of Insurance with power upon the filing of a complaint to order a revision or modification of rates if they are found, after investigation, to be unreasonable, excessive, arbitrary or unwarranted.

ROBERT F. WAGNER,
JAMES A. FOLEY.

AN ACT to amend article one hundred and twenty-four of chapter eighty-eight of the laws of nineteen hundred and nine, entitled "An act providing for the punishment of crime," constituting chapter forty of the consolidated laws.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article one hundred and twenty-four of chapter eighty-eight of the laws of nineteen hundred and nine is hereby amended by the addition thereto of a new section, to be known as section thirteen hundred and twenty-eight-a, to read as follows:

§ 1328-a. *A member of either of the houses composing the legislature of this state, to whom a person shall offer, or cause to be offered, a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, or when any person shall attempt, directly or indirectly, by menace, deceit, suppression of truth, or other corrupt means, to influence to give or withhold his vote, or to absent himself from the house of which he is a member, or from any committee thereof, who shall fail to immediately submit the facts in relation thereto to the house of which he is a member, if the house be in session, or if not in session, at the next session thereof, and to the district attorney of the county in which the offer or promise was made, is punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars, or both.*

§ 2. This act shall take effect immediately.

AN ACT to amend the insurance law by providing for a notice to be printed on the cover of policies of mutual fire insurance companies and in relation to the conditions which may be indorsed upon the standard fire insurance policy.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section one hundred and twenty of chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-

eight of the consolidated laws," is hereby amended to read as follows:

§ 120. What to appear on face of policy. Every domestic mutual fire insurance corporation shall embody the word "mutual" in its title, which shall appear on the first page of every policy and renewal receipt. Every fire insurance corporation doing business as a cash stock corporation shall upon the face of its policy in some suitable manner express that such policy is a policy in a stock corporation. *Every policy issued in this state under the terms of which the insured named in such policy is liable in any event to pay an assessment in addition to the premium stated in the policy, shall have visibly printed in red ink upon the back or the outside cover thereof, under the name of the corporation, association or person issuing the same, in plain type, the words: Notice: under the terms of this policy the insured is liable for future assessments.*

§ 2. Section one hundred and twenty-one of said chapter is hereby amended to read as follows:

§ 121. The printed blank form of a contract or policy of fire insurance, with such provisions, agreements or conditions as may be endorsed thereon or added thereto and form a part of such contract or policy, heretofore filed in the office of the secretary of state by the superintendent of insurance or by the New York board of fire underwriters pursuant to the provisions of chapter four hundred and eighty-eight of the laws of eighteen hundred and eighty-six shall be transferred by the secretary of state to the office of the superintendent of insurance and, together with such provisions, agreements or conditions as may previous to the thirty-first day of December, nineteen hundred and [one] *eleven*, be filed by the New York board of fire underwriters in the office of the superintendent of insurance and approved by him, which provisions, agreements or conditions shall be void if they are inconsistent with the standard fire insurance policy heretofore filed in the office of the secretary of state, shall be known and designated as the standard fire insurance policy of the state of New York. No fire insurance corporation, its officers or agents, shall make, issue, or deliver for use, any fire insurance policy or the renewal of any such policy on property in this state, other than such

as shall conform in all particulars as to blanks, size of type, context, provisions, agreements and conditions with such printed blank form of contract or policy; and no other or different provision, agreement, condition or clause shall be in any manner made a part of such contract or policy or indorsed thereon or delivered therewith, except as follows, to-wit:

1. The name of the corporation, its location and place of business, date of its incorporation or organization, whether it is a stock or mutual corporation, the names of its officers, the number and date of the policy, and if issued through a manager or agent the words, "this policy shall not be valid until countersigned by the duly authorized manager or agent of the corporation at ....."

2. Printed or written forms of description and specification, or schedules of the property covered by any particular policy, and any other matter necessary to clearly express all the facts and conditions of insurance on any particular risk not inconsistent with or a waiver of any of the conditions or provisions of the standard policy herein provided for.

3. With the approval of the superintendent of insurance, if the same is not already included in such standard form, any provision which any such corporation is required by law to insert in its policies, not in conflict with the provisions of such standard form. Such provisions shall be printed apart from the other provisions, agreements or conditions of the policy under a separate title as follows: "Provisions required by law to be stated in this policy." After the first day of January, nineteen hundred and eleven, such policy or contract may be printed, written or typewritten with any size of type or on any size or shape of paper which shall have the written approval of the superintendent of insurance.

The name, with the word "agent" or "agents," and place of business, of any insurance agent or agents, either by writing, printing, stamping or otherwise, may be endorsed on the outside of such policies.

Two or more fire insurance corporations, authorized to transact business in this State, may issue a combination standard form policy, using a distinctive title therefor, which title shall appear at the head of such policy followed by the titles of the several

corporations obligated thereupon, and which policy shall be executed by the officers of each of such corporations; provided, that before such corporation shall issue such combination policy, they shall have received the express permission of the superintendent of insurance to issue the same, and the title of such proposed policy and the terms of the additional provisions thereof, hereby authorized, shall have been approved by him, which terms, in addition to the provisions of the standard policy and not inconsistent therewith, shall provide substantially under a separate title therein, to be known as "Provisions specially applicable to this combination policy," as follows: (a) That each corporation executing such policy shall be liable for the full amount of any loss or damage, according to the terms of the policy, or a specific percentage thereof; (b) that service of process, or of any notices required by the said policy, upon any of the corporations executing the same shall be deemed to be service upon all; and provided, further, that the unearned premium liability on each policy so issued shall be maintained by each of such corporations on the basis of the liability of each to the insured thereunder.

§ 3. This act shall take effect September first, nineteen hundred and eleven.

AN ACT to amend the insurance law, so as to permit licensed agents to issue and countersign policies to cover surplus line insurance.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section one hundred and thirty-seven of chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," is hereby amended to read as follows:

§ 137. License to agents in excepted cases. The superintendent of insurance, in consideration of the yearly payment of two hundred dollars, except in counties having less than one hundred thousand inhabitants, in which case the fee shall not exceed twenty-five dollars, may issue to citizens, *firms or corporations* [of this state] not exceeding two hundred in number, a license

revocable at any time, permitting the party named in such license to act as agent to procure *from or to issue and countersign* policies of fire insurance [from] *of* corporations, persons, partnerships and associations which are not *otherwise* authorized to do business in this state. [Before] *When* any *policies of fire* insurance shall be procured, *or issued and countersigned,* under or by virtue of said license, there shall be executed by the licensed agent and by the party desiring an insurance, an affidavit in duplicate, one of which shall be filed in the insurance department and the other in the clerk's office of the county in which the property proposed to be insured is located, within thirty days after the procuring of such insurance. Such affidavits shall set forth that the party desiring insurance is, after diligent effort, unable to procure the amount required to protect the property owned or controlled by him from the insurance corporations duly authorized to transact business in this state. The agent procuring *or issuing and countersigning* policies in such unauthorized corporations or with persons, partnerships and associations, shall keep a separate account thereof, open at all times to the inspection of the superintendent, showing, first, the exact amount of such insurance placed for any party; second, the gross premiums charged thereon; third, in what corporation, or with what persons, partnerships or associations; fourth, the date of the policy; fifth, the term thereof, and sixth, the cities and villages *within this state* in which the insured property is located. Each party receiving such license shall, before transacting business thereunder, execute and deliver to the superintendent a bond to the people of the state, in the penal sum of two thousand dollars, with such sureties as the superintendent shall approve, conditioned that the said agent will faithfully comply with all the requirements of this chapter, and will pay to the treasurer of the Volunteer Firemen's Association of the state of New York, to be expended for the use and support of the Volunteer Firemen's Home, located at Hudson, Columbia county, New York, for the uses and purposes of said association, or, where such policies cover risks in cities of over one million inhabitants, having a fire patrol or salvage corps, to the treasurer of such fire patrol or salvage corps, in January and July of each year, a sum equal to three per centum upon the amount of the gross premiums charged to policy holders *less the amount of the*

gross premiums returned to the insured upon all policies procured, or issued and countersigned by him during the preceding six months, pursuant to this article; and in default of payment to the treasurer of any fire patrol or salvage corps of any sum to which it may be entitled pursuant to the provisions of this section, or the treasurer of the said Volunteer Firemen's Home Association of the sum due them, the treasurer of said fire patrol, salvage corps or association may sue for the same in any court of record in this state. All fire insurance policies issued to residents of this state on property located herein by companies that have not complied with the requirements of the general insurance laws of the state, shall be void, except such as shall have been procured, *or issued and countersigned* as herein set forth. *All policies issued or countersigned by such agents shall contain the provisions of the standard policy provided for by section one hundred and twenty-one of this chapter and a further provision that service of a summons or other legal process may be made on the licensed agent issuing or countersigning the same and that such service shall be equivalent to the personal service within this state of such process on the persons, associations or corporations obligated under any such policies; and such policies shall have printed in red ink upon the outside cover thereof, under the name of the corporation or association issuing same, in plain type, the words: Surplus line insurance only; this company (person, partnership, or association, as the case may be) is not supervised by the New York State Insurance Department; issued by ....., licensed agent, address .....*

§ 2. This act shall take effect immediately.

AN ACT to amend the insurance law by providing that persons, associations and corporations doing a fire insurance business in this state shall report the amounts at risk in congested value districts.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws,"

is hereby amended by inserting in article three of said chapter a new section, to be section one hundred and forty, and to read as follows:

§ 140. *Amount at risk in congested value districts to be reported. Every association, corporation or person authorized to do the business of fire insurance within this state shall report in the annual statement required to be filed by section forty-four of this chapter the total amount which said persons, associations or corporations have at risk on policies of insurance issued by them or on contracts or treaties of reinsurance which covers and insures property located in the congested value districts of all cities in the United States of over three hundred thousand inhabitants. Such reports shall show: (a) The total amount which each such person, association or corporation has at risk by reason of its outstanding policies of insurance or contracts of reinsurance covering property in such districts; (b) the total amount of such insurance which is re-insured with persons, associations or corporations which are authorized to do business in this state; (c) the total amount of such insurance which is reinsured with persons, associations or corporations not authorized to do business in this state. The boundaries of such districts shall be fixed and defined from time to time by the superintendent of insurance.*

§ 2. This act shall take effect immediately.

An Act to amend the insurance law by providing for the regulation and supervision of rate making associations.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," is hereby amended by inserting in article three of said chapter a new section, to be section one hundred and forty-one thereof, and to read as follows:

§ 141. *Rate making associations. Every association or bureau which now exists or hereafter may be formed for the purpose of making rates of fire insurance on property located in this state*

shall be subject to the visitation and supervision of the superintendent of insurance who shall cause an examination of each such association or bureau to be made at least once a year, and shall make public the results thereof, and shall report to the legislature in his annual report on the methods of such associations or bureaus and the manner of their operation.

Every such association or bureau shall file with the superintendent of insurance all schedules of rates fixed or made by it, which shall include in every instance the basis rate on each class of property concerning which rates are made, and all forms of warranties and all credits, charges, terms, conditions or privileges and any other matters which may affect such rates or the application of such schedules; it shall also file the specific rates on all property where such rates have been fixed in those cases, if any, where the general schedules so filed do not apply, with a full explanation of the reason for such specific rate or rates; it shall also file immediate notice of any change in such schedules or rates and the causes therefor; it shall also file such further information as to such schedules or rates as may be required by the superintendent; no such association or bureau or any person, association or corporation authorized to transact the business of fire insurance within this state shall fix or make any rate or schedule or any credit therein which is to apply to any risk on the condition that the whole amount of insurance on such risk or any specific part thereof shall be placed at such rate, or with the members of such association or bureau, or with a specified class of insurers; or shall fix or make a schedule of rates or charge a rate which discriminates between risks of essentially the same hazard and which are similarly protected against fire within this state; whenever it is made to appear to the satisfaction of the superintendent of insurance that such discrimination exists he may, after a full hearing, either before himself or a special deputy appointed for such purpose whose report he may adopt, order the rates on such risks to be made uniform, and all such associations, bureaus, persons or corporations affected thereby shall immediately comply therewith; no such association or bureau shall be permitted hereafter to license brokers to transact the business of fire insurance, nor shall it or any two or more persons, associations or corporations authorized to transact the business of fire insurance

within this state, acting in agreement, refuse to do business with or pay commissions to any person who may be licensed by the superintendent of insurance as a fire insurance broker, upon the ground or for the reason that such broker offers insurance to other persons, associations or corporations not members of such association or bureau or parties to such agreement, or because such brokers will not agree to secure insurance only at the rates fixed by such association or bureau, or seek to restrain or interfere with any such licensed broker in the transaction of his business, in any manner other than by proceeding against such broker according to law for violation thereof.

Every such association or bureau shall keep a careful record of its proceedings and shall furnish upon demand to any person on whose property a rate has been made, or his authorized agent, full information as to such rate and if such property be rated by schedule a copy of such schedule; it shall also provide such means as may be approved by the superintendent of insurance whereby any person or persons affected by such rate or rates may be heard, either in person or by agent, before the governing or rating committee of such association or bureau on an application for a change in such rate or rates.

§ 2. This act shall take effect September first, nineteen hundred and eleven.

An Act to amend the insurance law by providing that no commissions are to be paid agents or brokers for fire insurance unless they are authorized by a certificate of authority to transact a fire insurance business.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," is hereby amended by inserting in article three of said chapter a new section, to be section one hundred and forty-two, and to read as follows:

§ 142. *Business to be accepted from licensed agents and Brokers only; Agents' and Brokers' Certificates of Authority. No corporation, association or person authorized to do a fire*

insurance business within this state, or agent thereof, shall pay any commission or any other compensation to any person for services in obtaining any such insurance upon property located within this state, unless such person shall have first procured from the superintendent of insurance a certificate of authority to act as an agent of such corporation, association or person, or as a broker to solicit such insurance as hereinafter provided. No person or corporation shall act as agent, subagent, or broker in the solicitation or procurement of applications for such insurance, or receive for services in obtaining such insurance any commission or other compensation from any corporation, association or person authorized to do a fire insurance business in this state, or agent thereof, without first procuring a certificate of authority so to act from the superintendent of insurance, which must be renewed annually on the first day of January, or within six months thereafter. The certificates of authority to be issued by the superintendent of insurance under this section shall be divided into two classes, namely, one class by which the holders thereof shall be authorized to act as agents, and the other by which the holders thereof shall be authorized to act as brokers. The fee to be paid to the superintendent of insurance by the applicant at the time application is made shall be, for each agent's certificate two dollars, and for each broker's certificate ten dollars. Such certificates shall be issued by the superintendent of insurance only upon the written application of persons and corporations desiring such authority, and in the case of agents or corporations applying for such certificates of authority to act as agent, such application must be approved and countersigned by at least one of the corporations, associations or persons such applicant desires to represent; all such applications shall be upon forms approved by the superintendent of insurance, giving such information as he may require. The superintendent of insurance shall grant any such certificate of authority if he is satisfied and determines that the person or corporation making the application for such certificate is trustworthy and is competent to transact the business for which the application of such certificate is made, as agent or broker as the case may be, and such certificate of authority may be revoked by the superintendent of insurance upon it appearing to him that such agent or broker has ceased to be competent or trustworthy, or has violated any provision of this chapter,

or has issued or procured insurance on any property located in this state in behalf of or from any person, association or corporation not permitted by this chapter to write such insurance, or has refused or refuses to return to any corporation, association or person any part of any commissions paid to him or it on policies which have been subsequently canceled, unless such person or corporation is relieved from such obligation by any person, corporation or association who was liable on such policy as insurer. No such certificate shall be valid, however, in any event, after the first day of July of the year following the issuing of the same. Such certificates of authority shall be executed in triplicate; one copy thereof shall be filed in the office of the superintendent of insurance, and two copies thereof shall be issued to such agent or broker; one of which copies such agent or broker shall, within thirty days after such certificate of authority is issued, cause to be filed in the office of the clerk of the county in which such agent or broker resides or has his or its principal place of business, or, if a nonresident, in the office of the clerk of the county in this state in which he or it has an office for the transaction of business. Any person or corporation violating the provisions of this section shall forfeit to the state the sum of five hundred dollars.

§ 2. This act shall take effect January first, nineteen hundred and twelve.

An Act to amend the insurance law by prohibiting rebating and discrimination in relation to premiums paid for fire insurance.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," is hereby amended by inserting in article three of said chapter a new section, to be section one hundred and forty-three, and to read as follows:

§ 143. *Rebating and discrimination prohibited. No insurance corporation, association, partnership, Lloyds, or individual underwriters authorized to do the business of fire insurance within this*

state, or any officer, agent, solicitor or representative thereof, shall make any contract of fire insurance on property located within this state or agreement as to such contract, other than as plainly expressed in the policy issued or to be issued thereon; nor shall any such corporation, association, partnership, Lloyds or individual underwriters, or officer, agent, solicitor, or representative thereof, directly or indirectly, in any manner whatsoever, pay or allow or offer to pay or allow as inducement to such insurance, or after the insurance shall have been effected, any rebate from the premium which is specified in the policy or any special favor or advantage in the dividends or other benefit to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy or contract of insurance, or give, sell or purchase, or offer to give, sell or purchase, as inducement to such insurance, or in connection therewith, any stock, bonds or other securities of any insurance company, or other corporation or association, or any dividends or profits accrued thereon, or anything of value whatsoever, not specified in the policy, nor shall any fire insurance broker, his agent or representative, or any other person, directly or indirectly, either by sharing commissions or in any manner whatsoever pay or allow or offer to pay or allow as inducement to such insurance, or after the insurance shall have been effected, any rebate from the premium which is specified in the policy; nor shall the insured, his agent or representative, directly or indirectly, accept or knowingly receive any such rebate from the premium specified in the policy; this section shall not prevent any corporation, person, partnership or association lawfully doing the business of fire insurance in this state from the distribution of surplus and dividends to policyholders after the first year of insurance; nor shall this section prevent any such corporation or other insurer, or his or its agent, from paying commissions to the broker who shall have effected the insurance.

No person shall be excused from attending and, when ordered so to do, from testifying or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or

evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have been required so to testify or to produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding. Any person or corporation violating the provisions of this section shall be guilty of a misdemeanor and shall forfeit to the people of the state the sum of five hundred dollars for each such violation.

§ 2. This act shall take effect immediately.

An Act to amend the insurance law by providing for the admission of certain mutual fire insurance corporations of other states.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section one hundred and forty-nine of chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," is hereby amended to read as follows:

§ 149. Authorization of foreign mutual fire insurance corporations. Every mutual fire insurance company or association incorporated under the laws of any other state of the United States may be permitted to do business in this state by the superintendent of insurance on filing with him the following:

(a) A certified copy of its articles of incorporation or association and of its by-laws.

(b) A consent, duly executed, appointing the superintendent of insurance to be the true and lawful attorney for such company or association in and for this state, upon whom all legal process in any action or proceeding against the company or association may be served with the same effect as if it was a domestic company or association. Service upon such attorney shall thereafter be deemed service upon the company or association.

(c) An agreement that it will pay the taxes provided for in section one hundred and forty-nine-a of this chapter, and that it will furnish any further information as to its financial condition, and the premiums collected by it within this state, as the superintendent of insurance shall require.

(d) And each such company shall pay to the superintendent of insurance the fees required by section six of this chapter.

Provided, that no such certificate of authority shall be granted unless such company shall [keep on deposit with the superintendent of insurance of this state or with the auditor, comptroller or general fiscal officer of the state by whose laws it is incorporated, the sum of two hundred thousand dollars, in securities of the kind and character in which domestic fire insurance companies are required to invest as minimum capital investments by section sixteen of this chapter. The superintendent of insurance shall be furnished with a certificate of such auditor, comptroller or general fiscal officer, under his hand and official seal, that he, as such auditor, comptroller or general fiscal officer of said state, holds in trust and on deposit for the benefit of all the policyholders of the corporation such stock and securities. Such certificate shall embrace the items of securities so held and shall state that the officer making it is satisfied that the securities are worth the amount herein required; and

Provided, further, that such company shall annually file satisfactory proof with the superintendent of insurance that it has and maintains in addition to the foregoing deposit a reserve fund equal to the total unearned premiums on the policies in force, calculated on the gross sum without any deduction on any account charged to the policyholders on each respective risk from the date of the issue of the policy; and

Provided, further, that the certificate of authority granted by the superintendent of insurance, pursuant to the provisions of this act, to such insurance corporation to do business in this state, shall not remain in force for a longer period than one year. The statements and evidences of investment required by this act to be filed in the office of the superintendent of insurance before a certificate of authority is granted to such corporation, shall be renewed from year to year, and in such manner and form as the

superintendent may require, with an additional statement of the amount of premiums received, as required by this act, and losses sustained in this state during the preceding year, so long as such authority continues. If the superintendent is satisfied that the securities and investments remain secure and that it may be safely intrusted with the continuance of its authority to do business, he may grant a renewal of such certificate of authority.] *have at least five million dollars of insurance in force in not less than two hundred separate risks and shall have transacted a fire insurance business in its home state for at least ten years and shall have had insurance in force in at least the amount of five million dollars in each of the five years immediately preceding its application for admission to do business in this state; and shall have and maintain a reserve fund equal to the total unearned premiums on the policies in force calculated on the gross sum without any deduction on any account charged to policyholders on each respective risk from the date of the issue of the policy and in addition has a reserve or surplus or other net assets of at least fifty thousand dollars invested in securities of the kind and character in which domestic fire insurance companies are required to invest as minimum capital investments by section sixteen of this chapter, and in addition has contingent assets of at least fifty thousand dollars in the form of the obligations of policyholders to pay to such company such amount in the event the funds of such company fall below the amount required to meet all liabilities and to maintain the unearned premium reserve; and shall have net and contingent assets together in an amount equal to two per centum of the total insurance in force; and shall provide in all policies issued by it that the policyholder is liable, in addition to the original premium paid, to assessment in an amount at least equal to one year's premiums; provided, further, that no such company shall be exposed to loss to an amount exceeding ten per centum of its actual net and contingent assets upon property situated within the boundaries of one city block or on one group of buildings composed of attached or adjacent buildings which have less than sixty feet of clear space at all points between such buildings and other buildings; provided, further, that the certificate of authority granted by the superintendent of insurance pursuant to the provisions of this act to such*

insurance corporation to do business in this state shall not remain in force for a longer period than one year and that whenever the condition of any such corporation to which a certificate of authority has been granted is such that it cannot meet all the requirements of this section the superintendent of insurance shall forthwith revoke such certificate.

§ 2. Section one hundred and forty-nine-a of said chapter is hereby amended to read as follows:

§ 149-a. [Tax on foreign mutual fire insurance corporation.] Premium or Assessment Tax. Every mutual fire insurance company or association authorized to do business in this state pursuant to section one hundred and forty-nine of this chapter shall, *in lieu of all other taxes on premiums* annually, on or before the first day of February of each year, pay a tax of [one] *three* per centum on all [gross] *net* premiums or assessments collected or received *and retained* by it or them for such insurance upon property situate within this state during the preceding year ending the thirty-first day of December to the Superintendent of Insurance. *The term "net premium or assessments" shall in no event include any amounts returned to policyholders by way of unearned premiums on canceled policies, returns on account of reduction of rates or any dividends whatsoever.* On or before the first day of February of each year every such company or association shall file with said superintendent a [detailed] statement showing the [gross] *net* amount of premiums and assessments collected *and retained* during the preceding year, for insurance upon property located in this state [and specifying the amounts of premiums and assessments so collected by city, town, village or fire district in which the property covered by such insurance is located]. In case any such company or association shall neglect or refuse to make and file such report, or pay the tax imposed in this section, its certificate of authority to do business in this state shall be revoked by the superintendent of insurance and it shall forfeit the sum of one hundred dollars for each day after the first day of February of each year that it shall omit to make and file such report, or shall neglect to pay the tax imposed by this section, which sum shall be collected in an action in the name of the people of the state of New York to be prosecuted by the superin-

tendent of insurance and collected by him. After the neglect or refusal of such company or association to make and file such report, or pay such tax, such company or association or its agents shall not effect any insurance on any property in this state.

§ 3. Section one hundred and forty-nine-c of said chapter is hereby amended to read as follows:

§ 149-c. Distribution of Tax. *Ten per centum of all* [All] moneys received by the superintendent of insurance under the provisions of section one hundred and forty-nine-a of this chapter shall be [distributed by him on April first of each year after deducting the expenses of the collection and distribution thereof, as follows: Ten per centum thereof] *paid* to the Firemen's Association of the state of New York for the support and maintenance of the Firemen's Home at Hudson, New York, and the balance [to the various associations, cities, villages and fire districts in the same manner and to the same extent as the tax imposed by section one hundred and thirty-three of this chapter is now received by them, except that in the cities of New York and Buffalo, he shall pay the same to the officers and associations now receiving the tax imposed on foreign fire insurance companies under the provisions of the charters of said cities. The superintendent of insurance shall appoint, for a term not exceeding his own term of office a suitable and competent person to collect and distribute the tax imposed by section one hundred and forty-nine-a of this chapter. The person so appointed shall receive such compensation for his services and disbursements as the superintendent of insurance shall fix, but the same shall be payable only from the moneys which the said superintendent shall receive under the provisions of said last mentioned section.] *shall be paid by him into the state treasury.*

§ 4. This act shall take effect immediately.

An Act to amend the insurance law, providing that those county and town co-operative associations which, prior to July first, nineteen hundred and ten, were issuing policies of insurance on mercantile and manufacturing risks in amounts not to exceed four thousand dollars may continue to issue such insurance.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section two hundred and sixty-six of chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," as amended by chapter three hundred and twenty-eight of the laws of nineteen hundred and ten, is hereby amended to read as follows:

§ 266. General provisions affecting assesment corporations only. The following provisions shall affect corporations doing business on the assessment plan, pursuant to the provisions of this article.

1. Such corporations may issue policies of insurance against any loss or damage to detached dwelling houses, barns, hop houses, cheese factories, creameries, school buildings and other buildings, and the contents of any such buildings, together with the live stock owned on the premises by the insured; provided that nothing herein contained shall authorize such corporations to issue policies on buildings used for hotel, mercantile or manufacturing purposes, *except that such corporations which were, prior to July first, nineteen hundred and ten, issuing insurance on such risks may continue to issue insurance thereon in amounts of not more than four thousand dollars on each separate risk;* and provided, further, that no such policy shall be issued for more than seven thousand dollars on any one risk, or, if such policy is against loss or damage by reason of larceny, to the extent of not more than five hundred dollars on any one risk.

2. Every such corporation may classify the buildings or property insured therein at the time of the insurance and issue policies under different rates.

3. Every such corporation may borrow, on the credit of the corporation, sufficient to pay any loss, or make an assessment upon all the property insured, pro rata, according to the classification or according to the amount insured, as may be provided in the by-laws, sufficient to pay such loss. If it is deemed to be for the best interest of the corporation, such corporation may estimate the amount necessary to pay all the losses and expenses for the current year and to supply any deficiency in the preceding year, and

assess and collect the same from the members of the corporation. Each assesment shall be made pro rata upon all the property at the time insured, according to its classification or according to the amount insured.

§ 2. This act shall take effect immediately.

An Act to amend the insurance law, in relation to the organization of persons, partnerships or associations engaging in the business of insurance as Lloyds or inter-insurers, and to permit the admission Lloyds of other states, and to provide for the forwarding of process by the superintendent of insurance.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section thirty-five of chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," is hereby amended to read as follows:

§ 35. Superintendent to forward process. Whenever lawful process against an insurance corporation *or one or more persons* shall be served upon the superintendent of insurance under the provisions of this chapter, he shall forthwith forward a copy of such process by mail, prepaid and directed to the secretary of the corporation or *to such person or persons or* in the case of corporations incorporated under the laws of any foreign government, to the resident manager or last appointed general agent of the corporation in this country.

For each copy of process the superintendent shall collect the sum of two dollars, which shall be paid by the plaintiff at the time of such service, to be recovered by him as part of the taxable disbursements if he succeeds in the suit.

§ 2. Section three hundred of chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," as amended by chapter six hundred and thirty-eight of the laws of nineteen hundred and ten, is hereby amended to read as follows:

§ 300. Application of article. Notwithstanding the provisions of section fifty-four of this chapter, persons, part-

nerships or associations which, on October first, eighteen hundred and ninety-two, were lawfully and actually engaged in the business of insurance as Lloyds or inter-insurers or individual underwriters may, after January first, nineteen hundred and eleven, continue to do the business of insurance in this state, provided that such persons, partnerships or associations shall comply with the provisions of this article, but not otherwise[. No persons, partnerships or associations other than those specified in this section, and which shall receive the certificate of insurance specified in section three hundred and one of this chapter, shall, after January first, nineteen hundred and eleven, engage in the business of insurance in this state as Lloyds or inter-insurers.]*; and such persons, partnerships and associations as may comply with and be licensed according to sections three hundred and four and three hundred and five of this article may do such insurance business as is therein permitted.* Any persons, partnerships or association which, after January first, nineteen hundred and eleven, shall in this state engage in the business of insurance as Lloyds or inter-insurers, or represent or advertise that they are so engaged, without having been authorized so to do in accordance with the provisions of this article, and any agent, subagent, or representative of any such persons, partnerships, or association not so authorized to do such business in this state, who shall after January first, nineteen hundred and eleven, in any way represent any such unauthorized persons, partnerships or associations, directly or indirectly, in engaging or attempting to engage in the business of insurance in this state, shall be guilty of a misdemeanor.

§ 3. Section three hundred and two of said chapter is hereby amended to read as follows:

§ 302. General provisions affecting Lloyds and inter-insurers *licensed under the preceding section.* No such persons, partnerships or associations *who claim that they were lawfully and actually doing the business of insurance in this state as Lloyds or inter-insurers on October first, eighteen hundred and ninety-two,* shall, after January first, nineteen hundred and eleven, engage in the business of insurance in this state as Lloyds or inter-insurers, (a) unless there shall be on file in the office of the superintendent of insurance a copy of the original articles of association, co-

partnership agreement or inter-insurance contract, together with all amendments thereto, accompanied by an affidavit, verified by an attorney-in-fact, to the effect that it is a true copy, and stating where the principal office of such persons, partnerships or associations so doing such business is located, the kinds of insurance in which it is engaged, or in which it lawfully claims the right to engage, the name under which business is done and the names and post-office addresses of all the underwriters, inter-insurers and attorneys-in-fact so doing business as Lloyds or interinsurers, which affidavit shall be so verified not earlier than December fifteenth, nineteen hundred and ten; or (b) which shall change the name under which business is done, without first obtaining the written approval of the superintendent of insurance; or (c) which shall establish branches under other or different names or titles; or (d) which shall have a name so similar to that of any other Lloyds or insurance corporation as in the opinion of the superintendent of insurance is calculated to deceive, and any existing Lloyds having such a name may be required to change same by the superintendent of insurance; or (e) which does not maintain at all times, in addition to all outstanding claims and other liabilities, a sum equal to the total unearned premiums on the policies in force, calculated on the gross sums without any deduction on any account, charged to the policyholder on each respective risk from the date of the policy; or (f) which shall not have its assets invested as prescribed by section sixteen of this chapter; or (g) unless each of the underwriters shall be worth in his own right not less than twenty thousand dollars above all liabilities, such facts to be determined by the superintendent of insurance, and in determining same he may take the signed reports of commercial agencies having upwards of one hundred thousand subscribers. No such persons, partnerships or associations shall change the location of their principal office for the transaction of business without first filing with the superintendent of insurance the affidavit of an attorney-in-fact stating where such office is to be located, and in no event shall such office be located outside the state of New York. Every change in the underwriters, inter-insurers or attorneys-in-fact, made after the filing of the affidavit previously mentioned in this article, shall be reported to the su-

perintendent of insurance by a written verified statement of an attorney-in-fact within twenty days after the same has been made, which affidavit shall be accompanied by an agreement, executed and duly acknowledged, and binding the new underwriter or underwriters, inter-insurer or inter-insurers to the original agreement between all the underwriters or inter-insurers required to be filed by section three hundred and one of this chapter, with regard to the service of process. The underwriters' liability shall not be included in the statements or reports of such persons, partnerships or associations either as an asset or a liability and any deposit made by an underwriter with any such persons, partnerships or associations, if treated as an asset in any statement or report, shall also be charged as a liability.

§ 4. Article X of such chapter is hereby amended by adding thereto two sections to be known as sections three hundred and four and three hundred and five, and to read as follows:

§ 304. *General provisions affecting Lloyds and inter-insurance associations organized after July first, nineteen hundred and eleven. On and after July first, nineteen hundred eleven, twenty-five or more persons, partnerships or corporations which have the requisite authority by their charters may engage in the business of such insurance as is specified in sections one hundred and ten and one hundred and fifty of this chapter as Lloyds or inter-insurers upon receiving a certificate of authority from the superintendent of insurance so to do. The application for such certificate of authority shall be signed by the attorney or attorneys-in-fact of those persons desiring such certificate and must be accompanied by a declaration which must set forth, (a) the name under which the business is to be conducted which name shall not be so similar to any existing Lloyds, inter-insurance association or corporation, as, in the opinion of the superintendent of insurance is calculated to deceive; (b) the exact location of the principal office at which the business is to be conducted, which office must be in the state of New York; (c) the kinds of insurance intended to be written, which must be only of those permitted by this section; (d) an exact copy of the articles of association, copartnership agreements or inter-insurance contract made between such underwriters or inter-insurers; (e) the names and addresses of all the underwriters or inter-insurers*

so proposing to engage in such business; (f) the designation and appointment of one or more attorneys-in-fact who shall be residents of this state, with full names and addresses, upon whom a summons or other legal process can be served; (g) that a fund of at least two hundred thousand dollars has been contributed by the subscribers as a guaranty fund for policyholders and is in the possession of the attorney or attorneys-in-fact for such subscribers and is either in cash or invested in such securities as are specified in section sixteen of this chapter. Such declaration must be signed and sworn to by all of the persons, and the proper officers of the corporations so proposing to engage in the business of insurance pursuant to this section. After such documents specified shall be filed, the superintendent of insurance shall cause an examination of such Lloyds or inter-insurance association to be made, and if he is satisfied that all of the facts alleged in the declaration are true and that the article of association, copartnership agreement or inter-insurance contract are of such a character that the rights of the policyholders will be protected thereunder, he shall issue a certificate of authority to do such business of insurance in this state as is specified in the declaration, which certificate shall be issued to such Lloyds or inter-insurance association, under the name chosen and approved, authorizing the underwriters or inter-insurers thereof to do the business permitted. Any such Lloyds and inter-insurance associations as may be thus authorized to do business in this state (1) shall at all times keep and maintain a fund of an amount equal to all outstanding claims and other liabilities, plus the unearned premiums on the policies in force, calculated on the gross sums, without any deduction on any account, charged to the policyholder on each respective risk from the date of the policy, and in addition the sum of two hundred thousand dollars; (2) shall not change the name under which business is done without first obtaining the written approval of the superintendent of insurance; (3) shall not establish branches under other or different names or titles; (4) shall have its assets either in cash or invested as prescribed by section sixteen of this chapter; (5) shall notify the superintendent of insurance of any change in the location of its principal office for the transaction of business, which office shall always be in the state of New York, which said notice shall be in the form of a declaration

subscribed and sworn to by its attorney or attorneys-in-fact; (6) shall notify the superintendent of insurance of any change in its underwriters or inter-insurers, which notice shall be in the form of a declaration subscribed and sworn to by its attorney or attorneys in-fact; (7) shall not amend or change its articles of association, co-partnership agreement or inter-insurance contract without the approval of the superintendent of insurance, and a true copy of any amendment or change permitted shall be verified by an attorney-in-fact of such Lloyds or inter-insurance association and be filed with the superintendent of insurance; (8) shall notify the superintendent of insurance of any change in its attorney or attorneys-in-fact by filing with the superintendent of insurance an instrument revoking the designation or appointment of any attorney or attorneys-in-fact who are no longer to act for such underwriters or inter-insurers, and designating and appointing one or more attorneys-in-fact, residents of this state with full names and addresses, who shall thereafter be the attorney or attorneys-in-fact for such underwriters or inter-insurers, such instrument to be signed and sworn to by each and every of the underwriters or inter-insurers who shall then be doing business under such authority.

After any Lloyds or inter-insurance association is authorized to do business in this state, pursuant to this section, it may be joined by other and additional underwriters or inter-insurers, but in that event such underwriters or inter-insurers who may thereafter join such authorized Lloyds or inter-insurance association shall be held to be bound by the documents on file with the superintendent of insurance concerning such Lloyds or inter-insurance association in the same manner as though they had personally signed the same, and the attorney or attorneys-in-fact then authorized by the underwriters of such Lloyds or inter-insurance association to act for them shall thereafter and subject to the provisions of this section be the attorney or attorneys-in-fact for such additional underwriters, and service of a summons or other legal process on an attorney-in-fact for the underwriters of such Lloyds or inter-insurance association whose appointment is in force and so filed with the superintendent of insurance shall be equivalent to the personal service of such process on each and every of such underwriters and inter-insurers within this state.

The funds required by this section to be held by any Lloyds or inter-insurance association and all other undistributed funds held by it shall be liable primarily for the payment of any losses incurred under its policies, and any judgments recovered under any such policies against the underwriters thereon may be satisfied from such funds without regard to the extent of the various underwriters' interests therein, and such funds shall not be subject to the claims of general creditors of any of the underwriters of such Lloyds or inter-insurance association, other than policyholder creditors whose claims have arisen under their policies, until all policies under which any such underwriter is obligated have been terminated, and in that event the claims of such general creditors shall not be paid from such fund or be a lien upon any part thereof beyond an amount which when paid will leave intact and in the possession of such Lloyds or inter-insurance association an amount equal to the full unearned premiums on all policies in force and in addition the sum of two hundred thousand dollars as provided herein. Any clause in any policy issued by any such Lloyds or inter-insurance association which shall contain any provision inconsistent with this section shall be void.

§ 305. *Provisions for the admission of Lloyds and inter-insurance associations domiciled in other states. On and after July first, nineteen hundred and eleven, the superintendent of insurance may in his discretion issue a certificate of authority to a Lloyds or inter-insurance association domiciled in another state to do such insurance business in this state, for permission to do which application is made, and as may be authorized by the articles of association, partnership agreement or inter-insurance contract under which such Lloyds or inter-insurance association is operating, providing, however, that in no event shall authority be given to any such Lloyds or inter-insurance association to do other kinds of insurance business than those specified in sections one hundred and ten and one hundred and fifty of this chapter.*

The application for such certificate shall specify the kinds of business such Lloyds or inter-insurance association desires authority to transact within this state; it must be signed by the attorney or attorneys-in-fact for such Lloyds or inter-insurance association and must be filed with the superintendent of insurance to-

gether with, (a) a certificate from the insurance department of its home state that it has and maintains at all times an amount equal to all outstanding claims and other liabilities, plus the unearned premiums on all policies in force, calculated on the gross sums, without any deduction on any account charged to the policyholder on each respective risk from the date of the policy, and in addition the sum of two hundred thousand dollars; (b) a true copy of the articles of association, partnership agreement, or inter-insurance contract of such Lloyds or inter-insurance association, verified by its attorneys or attorneys-in-fact; (c) an agreement executed by an attorney or attorneys-in-fact for such Lloyds or inter-insurance association in such form as the superintendent of insurance may prescribe that it will not do any business in this state which a domestic Lloyds or inter-insurance association cannot do; (d) a declaration and agreement duly executed and acknowledged by each of the underwriters of such Lloyds or inter-insurance association, appointing the superintendent of insurance the true and lawful attorney for such Lloyds or inter-insurance association and the underwriters thereof in and for this state upon whom all legal process in any action or proceeding against the said Lloyds or inter-insurance association or the underwriters thereof may be served and that any service upon him shall be equivalent to the personal service within this state of such process on each and every of such underwriters or inter-insurers. If any such Lloyds or inter-insurance association is authorized to do business in this state, and, after such authorization, other underwriters or inter-insurers desire to join in issuing policies of insurance in this state with the underwriters or inter-insurers who have filed such declaration and agreement, they are authorized to so join upon filing similar declarations and agreements with the superintendent of insurance. The certificate of authority of any such Lloyds or inter-insurance association shall be revoked by the superintendent of insurance if at any time it appears that any underwriters or inter-insurers are issuing policies of insurance within this state, under apparent authority of such certificate without filing such declaration and agreement as aforesaid, or if such Lloyds or inter-insurance association does not maintain at all times the funds specified in this section, or has violated its agreement, or the law, or is

found to be in such a condition that the further transaction of business by it will be hazardous to its policyholders or its creditors or to the public.

Each such Lloyds or inter-insurance association shall pay the superintendent of insurance the fees required by section six of this chapter, and, in lieu of all other taxes upon premiums, shall annually on or before the first day of February in each year, pay to the superintendent of insurance a tax of two per centum on all net premiums collected or received by it for insurance upon property situate within this state during the preceding year ending the thirty-first day of December, which shall be paid by him into the state treasury.

§ 5. *This act shall take effect July first, nineteen hundred and eleven.*

An Act to amend the insurance law in relation to establishing the office of state fire marshal, defining his powers and duties, and providing for his compensation and the maintenance of his office.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," is hereby amended by inserting therein a new article to be article ten-a thereof, and to read as follows:

ARTICLE X-A.

STATE FIRE MARSHAL.

Section 350. Office of state fire marshal established; appointment; term; salary.
351. Deputies.
352. Assistant officers.
353. Duties of the assistants to the state fire marshal to investigate the cause and origin of all fires.
354. Duties of the state fire marshal and assistants to inspect property.

Section 355. Powers of state fire marshal, deputies and assistants.
356. Records.
357. Annual report.
358. Witnesses.
359. Duties of district attorney.
360. Compensation of assistants.
361. Penalties.

§ 350. Office of state fire marshal established; appointment; term; salary. The office of state fire marshal is hereby established. The governor is hereby authorized and empowered to appoint, within thirty days after this act shall take effect, by and with the advice and consent of the senate, a suitable person who shall be a citizen of this state, as state fire marshal, who shall hold the office until his successor is appointed and qualified. Such officer shall keep his office in the capitol in the city of Albany and may be removed for cause at any time by the governor. He shall receive an annual salary of four thousand dollars and shall be paid, in addition, his actual and necessary expenses incurred in the performance of the duties of his office. He shall devote his whole time to the duties of his office. Whenever there shall be a vacancy in the office of state fire marshal, the governor shall fill the vacancy for the unexpired term in the manner provided in this section. The state fire marshal and his deputies shall take and subscribe and file in the office of the secretary of state the constitutional oath within fifteen days from time of notice of their appointment respectively.

§ 351. Deputies. The state fire marshal shall appoint a first deputy fire marshal, who shall receive an annual salary of twenty-five hundred dollars, and a second deputy fire marshal who shall receive an annual salary of two thousand dollars. Each deputy shall also be paid his actual and necessary expenses incurred in the performance of the duties of his office. The state fire marshal shall also appoint such other clerks and assistants as shall be needed in the performance of the duties of his office. In case of the absence of the state fire marshal, or his inability from any cause to discharge the duties of his office, such duties shall devolve upon the first deputy state fire marshal; and in case of the

absence of the state fire marshal and the first deputy state fire marshal, or their inability from any cause to discharge the duties and powers of their office, such duties and powers shall devolve upon the second deputy state fire marshal.

§ 352. Assistant officers. All municipal fire marshals in those municipalities having such officers, and, where no such officer exists, the chief of the fire department of every incorporated city or village in which a fire department is established, the president or like senior officer of each incorporated village in which no fire department exists, and the clerk of each organized town without the limits of any incorporated village or city, shall be, by virtue of such office so held by them, assistants to the state fire marshal and subject to the duties and obligations imposed by this article and shall be subject to the direction of the state fire marshal in the execution of the provisions hereof. Immediately upon taking office the state fire marshal shall prepare instructions to the assistants designated herein and form for their use in the reports required by this article and cause them to be printed and sent, together with a copy of this article to each such officer located in this state.

§ 353. Duties of the assistants to the state fire marshal to investigate the cause and origin of all fires. The assistants to the state fire marshal as defined in the preceding section shall investigate the cause, origin and circumstances of every fire occurring in any city, village or town in this state by which property has been destroyed or damaged, and so far as it is possible, determine whether the fire was the result of carelessness or design. Such investigation shall be begun immediately upon the occurrence of such fire by the assistant in whose territory such fire has occurred, and if it appears to the officer making such investigation that such fire is of suspicious origin, the state fire marshal shall be immediately notified of such fact. Every fire occurring in this state shall be reported in writing to the state fire marshal within thirty days after the occurrence of the same by the officer designated in section three hundred and fifty-two of this article in whose jurisdiction such fire has occurred; such report shall be in the form prescribed by the state fire marshal and shall contain a statement of all facts relating to the cause and origin of such fire that

can be ascertained, the extent of damage thereof and the insurance upon such property, and such other information as may be required.

§ 354. Duties of the state fire marshal and assistants to inspect property. The state fire marshal, his deputies or assistants, upon the complaint of any person or whenever he or they shall deem it necessary shall inspect all buildings and premises within their jurisdiction. Whenever any of said officers shall find any building or other structure which, for want of repairs or by reason of age or dilapidated condition or for any other cause, is especially liable to fire and which is so situated as to endanger other property, and whenever such officer shall find in any building combustible or explosive matter or inflammable conditions dangerous to the safety of such buildings he or they shall order the same to be removed or remedied, and such order shall forthwith be complied with by the owner or occupant of such premises or buildings. If such order is made by any deputy or assistant to the state fire marshal such owner or occupant may, within twenty-fours, appeal to the state fire marshal, who shall, within ten days, review such order and file his decision thereon, and unless by his authority the order is revoked or modified it shall remain in full force and be obeyed by such owner or occupant.

Any owner or occupant failing to comply with such order within ten days after said appeal shall have been determined, or, if no appeal is taken, then within ten days after the service of the said order, shall be liable to a penalty of fifty dollars for each day's neglect thereafter. The service of any such order shall be made upon the occupant of the premises to whom it is directed by either delivering a true copy of same to such occupant personally or by delivering the same to and leaving it with any person in charge of the premises, or in case no such person is found upon the premises by affixing a copy thereof in a conspicuous place on the door to the entrance of said premises; whenever it may be necessary to serve such an order upon the owner of premises, such order may be served either by delivering to and leaving with the said person a true copy of said order, or, if such owner is absent from the jurisdiction of the officer making the order, by mailing such copy to the owner's last known post office address.

The penalty herein provided may be recovered in an action brought in any court of the county where such property is located, in the name of the people of the state, under the direction of the state fire marshal or any of his assistants herein designated, by the legally constituted law officer of the city, village or town where such property is located or by an attorney specially designated therefor by the attorney general.

§ 356. Powers of state fire marshal, deputies and assistants. The state fire marshal or his deputies may, in addition to the investigation made by any of his assistants, at any time investigate as to the origin or circumstances of any fire occurring in this state. The state fire marshal, his deputies and assistants shall have the power to summon witnesses and compel them to attend before them, or either of them, and to testify in relation to any matter which is by the provisions of this article a subject of inquiry and investigation, and may require the production of any book, paper or document deemed pertinent or necessary to the inquiry, and shall have the power to administer oaths and affirmations to any person appearing as a witness before them; such examination may be public or private as the officers conducting the investigation may determine.

No person shall be excused from attending before the said fire marshal or any of his deputies or assistants when summoned so to attend, nor, when ordered so to do, shall they be excused from testifying or producing any books, papers or documents before such officer upon any investigation, proceeding or inquiry instituted under the provisions of this article, upon the ground or for the reason that the testimony or the evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to a penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have been required so to testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding; if, after any such examination of witness or any investigation, the state fire marshal or any of his deputies or assistants is of the opinion that the facts in relation to such fire indicate that a crime has been committed, he shall present the testimony taken on such

examination, together with any other data in his possession to the district attorney of the proper county, with the request that he institute such criminal proceedings as such testimony or data may warrant.

The state fire marshal or his deputies or any of his assistants may at all reasonable hours enter any building or premises within his jurisdiction for the purpose of making an inspection which, under the provisions of this article, he or they may deem necessary to be made.

§ 356. Records. The state fire marshal shall keep in his office a record of all fires occurring in this state and of all the facts concerning the same, including statistics as to the extent of such fires and the damage caused thereby, and whether such losses were covered by insurance, and, if so, in what amount. Such record shall be made daily from the reports made to him by his assistants under the provisions of this article. All such records shall be public, except any testimony taken in an investigation under the provisions of this article which the state fire marshal in his discretion may withhold from the public.

§ 357. Annual report. The state fire marshal shall annually, on or before the fifteenth day of February, transmit to the legislature a full report of his proceedings under this article and such statistics as he may wish to include therein; he shall also recommend any amendments to the law which in his judgment shall be desirable.

§ 358. Witnesses. Any witness who refuses to obey a summons of the state fire marshal, his deputies or assistants, or who refuses to be sworn or to testify, or who disobeys any lawful order of the state fire marshal, his deputies or assistants in relation to any investigation instituted by him or them, or who fails or refuses to produce any book, paper or document touching any matter under investigation or examination, or who is guilty of any contemptuous act after being summoned to appear before him, or either of them, to give testimony in relation to any matter or subject under examination or investigation as aforesaid, may be punished for contempt of court.

§ 359. Duties of district attorney. The district attorney of any county upon request of the state fire marshal, his deputies or

assistants, shall assist such officers upon an investigation of any fire which, in their opinion, is of suspicious origin.

§ 360. Compensation of assistants. Except in cities having over seventy-five thousand inhabitants, all assistants of the state fire marshal not receiving a salary from the state of New York shall receive, upon the audit of the state fire marshal, fifty cents for each report of each separate fire reported to the state fire marshal under the provisions of this article, and in addition there shall be paid to the chiefs of the fire departments, or to the president or like senior officer of each incorporated village in which no paid fire department exists, or to the town clerk of each organized town without the limits of an incorporated village or city, whose duty it shall have been to make and who actually shall have made the investigation, the sum of fifteen cents for each mile traveled to the place of fire, and in the discretion of the state fire marshal, where an investigation has been had a sum not to exceed two dollars for each day's service spent in such investigation. In cities having upwards of seventy-five thousand inhabitants the sum of twenty-five cents for each report made and filed shall be paid in like manner to the officer making and filing the same.

§ 361. Penalties. All penalties or forfeitures collected under the provisions of this article shall be paid into the treasury of the state of New York.

§ 2. This act shall take effect immediately.